



STATE OF NEW JERSEY

In the Matter of Thomas Riordan,
Vineland

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2025-335

Request for Back Pay and
Counsel Fees

ISSUED: April 9, 2025 (SLD)

Thomas Riordan, a Police Lieutenant with the Vineland Police Department, represented by Christopher St. John Esq., requests that the Civil Service Commission determine his entitlements to back pay, benefits and counsel fees pursuant to its June 12, 2024, decision.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) removing the petitioner on charges of conduct unbecoming, discrimination and other sufficient cause. Upon his appeal, the matter was transmitted to the Office of Administrative Law for a hearing. Following a hearing and the Commission's *de novo* review, the charges were dismissed and the Commission ordered that the petitioner be reinstated and awarded mitigated back pay, benefits and seniority from October 21, 2022, the effective date of his removal¹ to the date of his actual reinstatement. However, the parties were unable to agree on the amount of back pay or counsel fees due to the petitioner, and the petitioner requested Commission review.

In his request, the petitioner initially asserts that as of October 21, 2022, his base salary was \$132,000. He maintains that he is entitled to gross back pay in the amount of \$113,517.76. The petitioner also notes that although he was returned to

¹ Pursuant to N.J.S.A. 40A:14-201, a law enforcement officer cannot be suspended without pay for more than 180 days, and thus, the Administrative Law Judge ordered that the petitioner be returned to pay status, effective July 29, 2023.

pay status on July 29, 2023, it was only at his previous salary of \$132,000, rather than \$138,000, the contractual amount he was entitled to receive, effective January 1, 2023. The petitioner also claims that effective January 1, 2024, the contractual amount he was to receive as a Lieutenant with seven years of experience was \$145,000. Therefore, he maintains that he is entitled to the difference in pay he received once he was returned to pay status and the contractual rate of pay he was entitled to receive.

With regard to mitigation, the petitioner claims that he actively sought employment. Specifically, he maintains that he created an indeed.com profile page and resume in November 2022 and sought positions in risk management and security management fields. In support, he submits his resume and indeed.com profile “Job preferences” page which indicates that he was interested in Police Lieutenant “Job titles,” for “full-time” positions, for a “minimum base pay” of “\$134,000 per year,” and that he was willing to work “Days[,] Monday to Friday[,] Weekends as needed.” He also indicated that he was willing to work eight, 10 or 12 hour day, night, evening or overnight shifts.

However, the petitioner asserts that although he reviewed updates of openings on indeed.com, he was not eligible for many as he did not possess the “mandatory educational requirements,” had not resigned in good standing or retired, nor did he possess a Security Officer Registration Act (SORA) certification as he did not qualify for one due to his termination. The petitioner also claims that his “publicized termination” hampered his job search. The petitioner maintains that he applied as an Investigator with the Office of the Attorney General, and that although he “attempted to retrieve the details of the applications from indeed.com,” he was unable to retrieve any specifics as “they only archive such applications and responses for six (6) months so the same are no longer available.” Additionally, the petitioner notes that “[d]uring the relevant time period,” he received unemployment benefits in the amount of \$16,808. The petitioner maintains that although he submitted weekly certifications to continue to receive unemployment benefits, he was also unable to “access the previously submitted weekly certifications of continued Unemployment eligibility that [he] completed which received Unemployment.” Therefore, based on the foregoing he claims that he is entitled to the following:

Time Period	Calculation	Total
10/21/22 – 12/31/22	71 days x \$361.64 daily rate (\$132,000/365)	\$25,676.44
1/1/23 – 7/29/23	210 days x \$378.08 daily rate (\$138,000/365)	\$79,396.80
7/29/2023 – 12/31/23	155 days x \$16.44 difference of daily rate (\$138,000-\$132,000 = \$6,000/155 days)	\$2,548.20

1/1/24 – 6/14/24	166 days x \$35.32 difference of daily rate (\$145,000-\$132,000 = \$13,000/166 days)	\$5,896.32
	Gross Pay	\$113,517.76
	less Mitigation	\$16,808
	Total Owed	\$96,709.76

The petitioner also requests reimbursement for payment of health benefit premiums, in the amount of \$10,532.22. Specifically, he notes that he enrolled in a health plan via the New Jersey Health Insurance Marketplace from November 1, 2022 through December 31, 2022, for \$1,090.69. Thereafter, from January 1, 2023 through July 31, 2023, he paid \$1,348.79 per month, for a total of \$9,441.53. In support, he submits printouts from the Marketplace, which lists his and his wife’s “current enrollments,” dates of coverage and costs; and a 1095-A Health Insurance Marketplace Statement for 2022 and 2023.

Moreover, the petitioner requests that his leave benefits be properly restored. In this regard, he notes that as of his removal in 2022, he had accrued 1442.75 hours of sick leave; 180 hours of vacation leave; and 27 hours of personal leave. Moreover, he notes that in 2023 and 2024, he would have been entitled to receive, per year, 120 hours of sick leave; 240 hours of vacation leave; and 32 hours of personal leave.

Additionally, the petitioner seeks counsel fees in the amount of \$57,600.² Specifically, Mr. St. John maintains that he spent 192 hours on this matter, and he notes that he was retained through the Police Benevolent Association (PBA) Legal Protection Plan (Plan). He notes that the Plan pays attorney’s fees at a rate of \$150 per hour, and reimburses out-of-pocket expenses, with a maximum fee of \$26,000, which he has received. However, Mr. St. John argues that he is entitled to an hourly rate of \$300 due to the complexity of the matter and the degree of success he achieved. In this regard, Mr. St. John notes that his standard hourly fee was \$375 in 2021, \$400 in 2022 and \$450 in 2023. Mr. St. John asserts that he was admitted to practice law in 2002 and has extensive experience in criminal law and providing legal advice to law enforcement officers in emergent situations as an Assistant Prosecutor in Camden County and since 2012 he has served as a Judge Advocate General in the United States Army. Mr. St. John maintains that since leaving the Prosecutor’s Office in 2015, he has concentrated his private practice on criminal and administrative litigation. He contends that the instant matter “was a lengthy and extraordinarily complicated matter that involved complex issues of law,” but that he achieved a complete reversal of the termination, and he had the petitioner successfully “reinstated to paid status under the 180 day rule over the [appointing authority’s] objections.” Finally, Mr. St. John requests reimbursement of his costs in

² A review of Mr. St. John’s invoice reveals charges in the amount of \$1,350 for work on an Appellate Division matter.

the amount of \$1,658.65. In support, he submits an invoice, which lists \$300 for “transcripts,” \$515 for “court house legal service fees”³ and \$823.65 for “transcript fees.”⁴

In response, the appointing authority, represented by William F. Cook, Esq., initially maintains that no back pay is warranted as the petitioner has been in full pay status for over a year under the “180-Day Rule,” and he failed to mitigate his damages. Regardless, the appointing authority claims that, without factoring in whether the petitioner mitigated, the net back pay award would be \$101,958.49. In this regard, the appointing authority notes that the petitioner’s salary was \$132,000 in 2022 (\$2,538.46 weekly amount), and would have been \$140,000 in 2023 (\$2,692.31 weekly amount) and \$145,000 in 2024 (\$2,788.46 weekly amount), his seventh year. The appointing authority maintains that the backpay amount for October 21, 2022 through December 31, 22, would be \$22,846.15 and from January 1, 2023 through July 29, 2021, it would be \$83,307.69. The appointing authority also notes that pursuant to the 180 day rule, the petitioner received \$53,307.66 from July 30, 2023 through December 31, 2023 and \$88,846.15 from January 1, 2024 through August 24, 2024. Therefore, he would only be entitled to the difference between what he received and what he should have received for those periods, or \$3,230.80 and \$8,653.85, respectively. Accordingly, it contends that the gross back pay amount owed would have been \$118,038.49. The appointing authority notes that the only mitigation amount provided by the petitioner was \$16,080 for the unemployment benefits, bringing the net total to \$101,958.49.

However, the appointing authority argues that the petitioner is not entitled to any back pay as he failed to make reasonable efforts to mitigate. In this regard, it contends that in his certification, he claims that he submitted one application and claims that it was somehow destroyed and he no longer has it, he completed an indeed.com profile and submitted that application while on unemployment. However, he does not indicate that he made an effort to mitigate, once he was reinstated to full pay status. The appointing authority also argues that even though he was reinstated to pay status, *N.J.A.C. 4A:2-2.10(d)*⁴ still requires a petitioner to mitigate during the entire period of separation. Therefore, it maintains that he did not engage in reasonable efforts to mitigate, he is not entitled to any back pay.

Additionally, the appointing authority argues that the petitioner is not entitled to any reimbursement for health benefit premiums as he provided no proof of payment of any premiums. Rather, it notes that he only submitted his tax document,

³ The “court house legal service fees” are dated August 6, 2023. Mr. St. John notes fees for drafting a submission for the Appellate Division on August 2, 2023. So, the fees appear to be connected to the Appellate Division matter.

⁴ The invoice lists the two transcript fees for the same date, but there is no explanation as to the difference between the two.

which shows in enrolled in the Health Insurance Marketplace, but does not provide proof of payment.

Moreover, with regard to the requested counsel fees, the appointing authority argues that Mr. St. John has already been paid through the Plan, and any additional award would violate public policy. Moreover, it contends that as Mr. St. John did not have a retainer agreement with the petitioner, he cannot now request reimbursement for any fees without violating ethical standards and court rules. Finally, the appointing authority argues that as the petitioner has no retainer agreement, he has not incurred any counsel fees, and as such has never received a bill from Mr. St. John.

Notwithstanding the foregoing, the appointing authority asserts that under *N.J.A.C. 4A:2-2.12*, the Commission shall only award reasonable counsel fees incurred in proceedings before it or incurred at the departmental level. In this regard, it maintains that Mr. St. John included fees for services rendered in connection with the Appellate Division proceedings, including interlocutory appeals which are not allowable under *N.J.A.C. 4A:2-2.12*.

CONCLUSION

Back Pay

Pursuant to *N.J.A.C. 4A:2-2.10(d)*, an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain health insurance coverage during the period of improper suspension or removal. *N.J.A.C. 4A:2-2.10(d)1* provides that back pay shall not include items such as overtime pay and holiday premium pay. *N.J.A.C. 4A:2-2.10(d)2* provides that the award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payment, and any other sums normally withheld. Further, *N.J.A.C. 4A:2-2.10(d)3* states, in pertinent part, that an award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received.

N.J.A.C. 4A:2-2.10(d)4 states where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed, and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

- i. “Underemployed” shall mean employment during a period of separation from the employee’s public employment that does not constitute suitable employment.
- ii. “Reasonable efforts” may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or on-line job listings or services; applying for suitable positions, attending job fairs, visiting employment agencies; networking with other people; and distributing resumes.
- iii. Suitable employment” or “suitable position” shall mean employment that is comparable to the employee’s permanent career service position with respect to job duties, responsibilities, functions, location, and salary.
- iv. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter.
- v. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment.

*N.J.A.C. 4A:2-2.10(d)*⁵ states, in pertinent part that an employee shall not be required to mitigate back pay for any period between the issue date of a Civil Service Commission decision reversing or modifying a removal. The award of back pay for this time period shall be reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received.

Initially, as there is some dispute with the amounts of back pay owed, the Commission will rely on the numbers provided by the appointing authority. Thus, the gross back pay amount is \$118,038.49.

During the petitioner’s separation from employment, he received \$16,080 in unemployment benefits. There is a presumption that the receipt of unemployment benefits evidences that an employee sufficiently mitigated during the period of

separation, since searching for employment is a condition to receiving such benefits. *N.J.S.A. 43:21-4(c)1* states that “an unemployed individual shall be eligible to receive [unemployment] benefits with respect to any week only if . . . The individual is able to work, and is available for work, and has demonstrated to be actively seeking work.” However, this presumption may be rebutted where the petitioner did not make a diligent effort to seek employment. *In the Matter of Donald Hicks*, Docket No. A-3568-03T5 (App. Div. September 6, 2005). See *In the Matter of Alphonso Hunt*. In this case, the petitioner’s affidavit did not address his mitigation efforts during the time he collected unemployment. Rather, he maintained that although he submitted weekly certifications to continue to receive unemployment benefits, he was unable to “access the previously submitted weekly certifications of continued Unemployment eligibility that [he] completed which received Unemployment” and therefore, could provide no information as to his mitigation efforts. Moreover, in his certification he only lists one position that he applied for, Investigator with the Office of the Attorney General. The petitioner provides no further details, such as the date he applied for this position. Rather, he states that although he “attempted to retrieve the details of the applications from indeed.com,” he was unable to retrieve any specifics as “they only archive such applications and responses for six (6) months so the same are no longer available.” Although the petitioner claims that he “received weekly updates from indeed.com about open positions,” he claims that he did not possess the qualifications for them. However, there is no indication in the petitioner’s certification that he submitted applications for these or any other positions. Moreover, a review of the petitioner’s profile page indicates that the only position he indicated he was interested in was “Police Lieutenant” with a base salary of \$134,000 per year. However, even if comparable employment was not available, there is no indication in the petitioner’s certification that he looked at any positions that were not security or law enforcement related. The Commission emphasizes that the petitioner was not required to actually find employment during this time but only required to demonstrate that he made *reasonable* efforts to find suitable employment. See *N.J.A.C. 4A:2-2.10(d)4*. However, the Commission does not find that the submission of one application evidences that he made a reasonable effort. Therefore, as he has not demonstrated that he made any reasonable effort during this time, the presumption regarding receipt of unemployment benefits has been rebutted and the Commission finds that the petitioner is neither entitled to back pay during the time he collected unemployment benefits nor any other time through July 28, 2023.⁵

With regard to the time period after he was reinstated to pay status, the petitioner provides no specifics as to any attempts to mitigate. Moreover, the Commission agrees that, where, as here, the petitioner may have been entitled to additional monies above his base pay, although the petitioner was returned to pay

⁵ As the petitioner has not specified the dates he collected unemployment benefits, the Commission assumes that the unemployment benefits were received from October 22, 2022 through July 28, 2023. Regardless, as it has found that his mitigation efforts were insufficient, as indicated, he would not be entitled to any back pay for any periods he was not receiving unemployment benefits.

status pursuant to *N.J.S.A.* 40A:14-201, that in and of itself did not absolve the petitioner of the requirement to mitigate pursuant to *N.J.A.C.* 4A:2-2.10(d)3 and *N.J.A.C.* 4A:2-2.10(d)4. Therefore, as the petitioner has not demonstrated that he made any effort during this time period, the Commission finds that the petitioner is not entitled to any back pay from July 30, 2023, until June 12, 2024, since mitigation efforts are not required after the issuance of the Commission's decision pursuant to *N.J.A.C.* 4A:2-2.10(d)5. From June 13, 2024, until his date of reinstatement, he is entitled to the difference between the amounts he received under the 180 day rule and the amounts he would have otherwise been contractually entitled to.

With regard to the petitioner's request for reimbursement of \$10,532.22 for the payment of premiums for health benefits on the Marketplace, *N.J.A.C.* 4A:2-2.10(d) provides for reimbursement of payments made to maintain the **employee's** health insurance coverage. Therefore, although the petitioner would be entitled to any monies he spent on the Marketplace to maintain his *own* health insurance, he would not be entitled to any monies that he spent to maintain his wife's health insurance. *See In the Matter of Obianuju Okosa* (MSB, decided October 1, 2003) (Reimbursement of premiums paid by the petitioner's husband to maintain his health insurance was not authorized under *N.J.A.C.* 4A:2-2.10(d)). Accordingly, the petitioner is only entitled to reimbursement for health premium payments which were solely for his health insurance.

With regard to the petitioner's request for vacation time accrued prior to his removal on October 22, 2022 and thereafter, the Commission notes that, per *N.J.S.A.* 11A:6-3(e) and *N.J.A.C.* 4A:6-1.2(g), vacation leave not taken in a given year can only be carried over to the following year. *See also In the Matter of Donald H. Nelsen, Jr.*, Docket No. A-2878-03T3 (App. Div. February 4, 2005); *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). Since the accumulation of vacation leave is statutory, the Commission is unable to award the petitioner any unused vacation leave he possessed as of October 22, 2022, or any vacation leave that he would have earned in 2023. The Commission finds that the petitioner is entitled to receive vacation leave for the full 2024 calendar year.

With regard to the amount of sick leave due to the petitioner, the petitioner should receive any unused sick days up to his removal, as well as his yearly allotments from his date of removal to his reinstatement, since sick leave can accumulate from year to year without limit. *See N.J.S.A.* 11A:6-5 and *N.J.A.C.* 4A:6-1.3(f); *See also, In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004).

As to any other benefit days, the Commission has no authorization to review benefits provided by the local jurisdiction and not specifically awarded by Title 11A

of the New Jersey Statutes Annotated. *See In the Matter of James Nance* (MSB, decided October 1, 2003).

Counsel Fees

N.J.A.C. 4A:2-2.12(a) provides that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission. *N.J.A.C.* 4A:2-2.12 states that, subject to the provisions of *N.J.A.C.* 4A:2-2.12(c) and (d), the following fee ranges shall apply in determining counsel fees: 1. Associate in a law firm: \$ 100.00 to \$ 150.00 per hour; 2. Partner or equivalent in a law firm with fewer than 15 years of experience in the practice of law: \$ 150.00 to \$ 175.00 per hour; or 3. Partner or equivalent in a law firm with 15 or more years of experience in the practice of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law: \$ 175.00 to \$ 200.00 per hour. However, if an attorney has signed a specific fee agreement with the employee or employee's negotiations representative, the attorney shall disclose the agreement to the appointing authority. The fee ranges set forth in (c) above may be adjusted if the attorney has signed such an agreement, provided that the attorney shall not be entitled to a greater rate than that set forth in the agreement.

N.J.A.C. 4A:2-2.12(e) provides that a fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors (*see* the Rules of Professional Conduct of the New Jersey Court Rules, at RPC 1.5(a)) shall be considered: 1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2. The fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated; 3. The nature and length of the professional relationship with the employee; and 4. The experience, reputation and ability of the attorney performing the services.

In the instant matter, the Plan set counsel fees at a rate of \$150 per hour. The petitioner argues that pursuant to *N.J.A.C.* 4A:2-2.12(e), the Commission has the discretion to assess fees based on the circumstances of the particular manner, and therefore, the counsel fees should instead be reimbursed at a rate of \$300 per hour, instead of the \$150 as provided for under the Plan. While this assertion that the Commission can assess fees based on circumstances is correct, the petitioner has not presented any compelling reason why the Commission should award him an hourly rate higher than the rate prescribed by the Plan. In this regard, while the record in this matter was voluminous, it did not involve any novel legal issues that warrant a higher fee. Therefore, based on the foregoing, the Commission finds that the rate that Mr. St. John is entitled to be reimbursed at in this matter is the \$150 hourly rate as indicated in the Plan. *N.J.A.C.* 4A:2-2.12, states that the Commission shall only

award reasonable counsel fees incurred in proceedings before it or incurred at the departmental level. Therefore, the Commission agrees that Mr. St. John would not be entitled to reimbursement of fees (\$1,350) for services rendered in connection with the Appellate Division proceeding. Thus, the petitioner should be reimbursed for \$27,450 (192 hours x \$150 = \$28,800 - \$1,350).

Costs

Finally, the petitioner requests reimbursement of costs in the amount of \$1,658.65. In support, Mr. St. John submits an invoice, which lists \$300 for “transcripts,” \$515 for “court house legal service fees” and \$823.65 for “transcript fees.” *N.J.A.C.* 4A:2-2.12(g) provides that reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses. However, costs associated with normal office overhead shall not be awarded. In this matter, although there is no description as to what the “court house legal service fees” are, it appears that they are fees for the Appellate Division matter, and thus not recoverable in this matter. Therefore, the petitioner is entitled to an award of \$1,123.65 for costs for transcripts.

ORDER

Therefore, it is ordered that the request for back pay be denied from October 22, 2023 through June 12, 2024. From June 13, 2024, until his date of reinstatement, the petitioner is entitled to back pay for the difference between the amounts he received under the 180 day rule and the amounts he would have otherwise been contractually entitled to. It is also ordered that the appointing authority reimburse Riordan for the health benefit premiums paid for continuation of *his* health insurance. Riordan is directed to provide evidence of such amounts to the appointing authority within 10 days of receipt of this decision. Payment of differential back pay and reimbursement of health insurance premiums shall be made within 30 days of receipt of this decision. Finally, it is ordered that the appointing authority pay counsel fees in the amount of \$27,450 and costs in the amount of \$1,123.65 within 30 days of receipt of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF APRIL, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
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