STATE OF NEW JERSEY

In the Matter of Daniel Burke, Jackson, Department of Administration CSC Docket No. 2026-1666	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION** Request for Reconsideration

ISSUED: August 12, 2026 **(HS)**

Daniel Burke, a former Municipal Engineer with Jackson, Department of Administration, represented by F. Kevin Lynch, Esq., requests reconsideration of the Civil Service Commission's (Commission) decision in *In the Matter of Daniel Burke, Jackson, Department of Administration* (CSC, decided November 26, 2025). That decision is incorporated herein.

The prior decision ordered, in pertinent part, that the appointing authority pay the petitioner for his 2022 and proportionate 2023 vacation leave entitlements and $4,881.30 as reimbursement for his expenses to maintain health insurance coverage. It was further ordered that the appointing authority credit the petitioner for unused sick leave as set forth in the decision. However, the Commission did not order payment for the accumulated sick leave. Additionally, the petitioner's request for back pay was denied.[1]

On reconsideration, the petitioner requests to be made whole for damages relating to lost pay benefits, lost pension, and out-of-pocket expenses for longer commute and more expensive commute times. The Commission's award, he argues, did not consider the Public Employment Relations Commission's (PERC) decision, which ordered that he be "made whole" for lost salary and benefits, less mitigation, with interest at the rate set by Court Rules. He highlights that PERC is authorized

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[1] The decision also awarded the petitioner $86,460.00 in counsel fees and $2,241.31 in costs. These items are not in dispute.

to order "such relief as will effectuate the purposes of the Act." *N.J.S.A.* 34:13A-5.4(c). The Commission's prior findings, in his view, relied on incorrect interpretations of Civil Service remedies and restricted the meaning of making a successful litigant "whole." He notes that in addressing the make-whole remedy standard, the National Labor Relations Board (NLRB) has stated that it "will expressly order that the respondent compensate affected employees for all direct or foreseeable pecuniary harms suffered as a result of the respondent's unfair labor practice." Thryv, Inc. 372 NLRB No. 22 (2022). Specifically, the petitioner now makes the following demands:

- $32,132 in "costs incurred for the maintenance of health care from the layoff date until [his] retirement on April 30, 2023" for the period February 2020 – April 2023 should be awarded in addition to the $4,881.30 already awarded. The petitioner indicates that these costs "are from [his] respective annual W-2's. The [appointing authority] has these records."

- $37,182 should be paid for accumulated sick leave.

- Payment for 2022 vacation leave entitlement should be $21,146 (245 hours). Payment for the proportionate 2023 vacation leave entitlement should be $7,200 (81.66 hours).

- He is entitled to "lost salary" from the layoff until commencement of employment with New Brunswick in December 2019, less unemployment insurance.

- He should be compensated for lost vacation and "personal time" resulting from the layoff and the corresponding loss of tenure in the employment with New Brunswick, covering the period from the layoff through April 2023.

- A "[l]ost Director stipend" from October 2015 through November 2019 should be paid.

- The petitioner lost three months of "pensionable time" (layoff through November 2019) with a present and future value of $98,345.

- The petitioner incurred extra travel costs to maintain the new employment with New Brunswick.

- An award of interest is also due.

In response, the appointing authority, represented by Kyle J. Trent, Esq., counters that the petitioner's demands are not supported by any competent factual evidence, law, or contract provision, and he fails to present any new evidence or information which would change the outcome of this matter, let alone justification for why such information was not presented in the prior proceeding. The appointing authority maintains that the petitioner makes various assertions regarding amounts owed without supporting documentation, basis, or explanation to justify the demand. Despite vague assertions, the petitioner fails to identify any specific "incorrect interpretations of Civil Service remedies," and he is unable to point to any New Jersey caselaw, statute, or rules contrary to the Commission's decision on any point.

The appointing authority explains how it calculated the value of the petitioner's 2022 and proportionate 2023 vacation leave entitlements. Specifically, it applied the terms of the International Union of Operating Engineers ("IUOE") Contract (Article Eleven, vacation leave) governing the petitioner's position's employment. Article Eleven provides employees with 15 or more years of service are entitled to 25 working days of vacation. Additionally, department and division heads are entitled to an additional five working days. Accordingly, the appointing authority determined that the petitioner's annual entitlement for 2022 would be 30 working days. Based on a seven hour workday, the appointing authority calculated that the annual vacation accrual for 2022 would be 210 hours (30 days x 7 hours). Additionally, the appointing authority determined that if the petitioner worked the four full months in 2023 before he retired, effective May 1, 2023, he would have accrued vacation at a rate of 2.5 days per month (30 days ÷ 12 months), and his proportionate vacation leave for 2023 would be 10 days, or 70 hours (10 days x 7 hours). Adjusting for negotiated annual increases set forth in the IUOE contract yielded a 2022 hourly rate of approximately $74.22 and 2023 hourly rate of approximately $77.19. Thus, the appointing authority paid the petitioner $15,586.80 for 2022 and $5,403.43 for 2023. It also paid the petitioner $4,881.30 relative to his expenses to maintain health insurance coverage as previously ordered.

The appointing authority maintains that the Commission correctly applied *N.J.A.C.* 4A:2-2.10 to determine that the petitioner was not entitled to any back pay award in order to make him whole and recognized that there was no basis for relief related to any stipend positions for the period of 2015 to 2019 or otherwise. There is also no basis for the petitioner's unsupported demand for payment for extra travel costs or other demands for additional compensation. Additionally, as the back pay award the petitioner was entitled to was and is zero, there also can be no interest charge on such amount owed. The appointing authority also submits that the Commission correctly applied the governing law in determining that the petitioner was only entitled to 2022 and proportionate 2023 vacation leave entitlements. It proffers that the petitioner is continuing to seek payment for time which he is prohibited from receiving under the law given he continues to calculate his demands to include leave benefits from 2020.

In reply, the petitioner continues to argue that the relief due must account for the loss of his "Director's stipend" position in 2015;[2] that his pension calculation has been adversely affected; that he is owed compensation for lost vacation days for the period from his layoff through 2021; and that the claim of full mitigation of losses due to the final earnings from the New Brunswick employment does not address several economic losses. Thus, in his view, there is no reason to deny his claims for lost stipend from October 1 of 2015 through the date of his layoff nor the wage and benefit losses; reduced vacation time for 2019 through 2021; lost annual sick time payout; reduced monthly pension payments; the extra travel costs incurred for the new employment; and interest.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or the petitioner's representative and must show the following: (1) the new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or (2) that a clear material error has occurred. A review of the record reveals that reconsideration is not justified.

With respect to the issue of health insurance coverage, it is noted that in the prior matter, the petitioner had certified to the following:

> The amount I had to expend for health insurance premiums through COBRA during the time I was unemployed and before health benefits were available with New Brunswick is $4,881.30. Again, my former employer, [the appointing authority], has access to this information and these numbers. I am providing these calculations based upon my check register (which I can produce if necessary). I do not have these almost six year old cancelled checks, but these amounts are easily verifiable by [the appointing authority]. My check register reflects the following:
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> 11/9/2019 Check . . . payable . . . in the amount of $2,462.60
> 12/10/2019 Check . . . payable . . . in the amount of $1,231.30
> 1/5/2020 Check . . . payable . . . in the amount of $1,187.40

Now, the petitioner claims that he is entitled to an additional $32,132 in "costs incurred for the maintenance of health care from the layoff date until [his] retirement on April 30, 2023" for the period February 2020 – April 2023. As noted above, *N.J.A.C.* 4A:2-1.6(b)1 requires the petitioner to present new evidence or additional information not presented at the original proceeding, which would change the outcome *and the reasons* that

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[2] It is noted that a review of the County and Municipal Personnel System finds that the petitioner had served in the unclassified title of Municipal Department Head from March 6, 2007 to September 30, 2015. The permanent appointment rights of Title 11A, New Jersey Statutes, are not applicable to unclassified appointments. *See N.J.A.C.* 4A:4-1.3(b); *N.J.A.C.* 4A:3.

such evidence was not presented at the original proceeding. The petitioner has not provided reasons as to why information concerning the additional $32,132 allegedly owed was not presented in the prior matter. Thus, the Commission declines to reconsider the issue of expenses to maintain health insurance coverage.[3]

Turning to other issues, the Commission declines to order a $37,182 payout for accumulated sick leave. The petitioner does not present any basis to revisit this issue, which was addressed as follows in the prior decision:

> Regarding sick leave credit, the petitioner should be credited with any unused sick leave prior to the layoff; sick leave for the period from August 30, 2019 through December 31, 2019; all of his sick leave for 2020 through 2022; and the proportionate amount of sick leave for 2023, 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). *However, the Commission does not order payment for this accumulated sick leave as it has no authority to do so.* Payment for accumulated sick leave in local service is typically governed by such things as local government policy and collective negotiations agreements. Thus, if the petitioner is to be paid for his accumulated sick leave, such relief must come through some other mechanism, not an order by the Commission (emphasis added).

There is also no basis to disturb the appointing authority's calculation of the petitioner's vacation leave payout. The petitioner's argument for an increased payout is premised on incorporating his "Director's stipend" position into the calculation. However, as made apparent in the prior decision (and, for that matter, the March 19, 2025 decision), any "stipend positions" were outside the scope of this matter, which pertains only to the petitioner's position as Municipal Engineer, a classified title. Further, the Commission has no authority to award a payout for vacation leave prior to 2022 because the ability to carry over vacation leave is statutory, *see N.J.S.A.* 11A:6-3(e), and the Commission cannot relax a statute. To the extent that the petitioner is also now requesting a payout for "personal time," 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 Evan Scott* (MSB, decided September 10, 2019).

Similarly, there is no basis to revisit the Commission's prior determination on the issue of back pay, which was appropriately rendered pursuant to *N.J.A.C.* 4A:2-2.10, the governing regulation. *See also N.J.S.A.* 11A:8-4 (rules adopted pursuant to *N.J.S.A.* 11A:2-22 applicable to good faith layoff appeals) and *N.J.S.A.* 11A:2-22 (Commission may award back pay, benefits, seniority and reasonable counsel fees to

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[3] In any event, the petitioner does not provide substantive supporting documentation here regarding these additional costs, noting only that they are from his W-2's and that the appointing authority has the records.

employee as provided by rule). Further, as correctly noted by the appointing authority, interest is not in order here given that no back pay was awarded. *See N.J.A.C.* 4A:2-2.11(a) (noting that Commission may award interest in certain situations *when it makes a back pay award*).

Further, the Commission lacks authority to award damages for reduced pension benefits or extra travel costs. *See N.J.A.C.* 4A:2-1.5.

Finally, the instant request largely rehashes claims that were made previously and which were rejected in the prior decision. While the petitioner may believe he is entitled to additional relief, the Commission can only provide those remedies that are within its jurisdiction. *See, e.g., In the Matter of Frank James* (CSC, decided April 10, 2024), *aff'd,* Docket No. A-2840-23 (App. Div., October 20, 2025) (Commission determined it lacked jurisdiction to award damages for adverse tax consequences of receipt of back pay in lump sum). Any claim as to the petitioner's being "made whole" through an award of additional relief may be addressed to PERC or in another appropriate forum. Accordingly, the standard for reconsideration has not been met.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

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 12TH DAY OF AUGUST, 2026

Mary Cruz
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Shannon L. Dalton
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Daniel Burke
F. Kevin Lynch, Esq.
Mildred Vallerini Spiller, Esq.
Charles Terefenko
Kyle J. Trent, Esq.
Records Center
Division of Agency Services