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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of William Wagner,
Department of Transportation

Administrative Appeal

CSC Docket No. 2015-1628

ISSUED: MAR 10 2015

(SLD)

William Wagner, a former Crew Supervisor, Mechanics with the Department of Transportation, requests compensation for 64 hours of unused vacation days upon his June 16, 2014 resignation in good standing.

By way of background, Wagner carried forward 64 hours of unused vacation leave into 2013. However, on January 22, 2013, Wagner was indefinitely suspended pending the outcome of criminal charges. As such, his vacation time for 2013 was prorated, and it was determined that he had only earned 13.5 hours of vacation leave for 2013, prior to his indefinite suspension. See *N.J.A.C. 4A:6-1.5(b)*. Wagner resigned effective June 16, 2014. Thereafter, the appointing authority remitted payment of the 13.5 hours of vacation leave that the appellant had earned for 2013. However, it advised the appellant by letter that he could not be reimbursed for the 64 hours of vacation leave he earned in 2012, since he was unable to carry over vacation leave for more than one year. See *N.J.S.A. 11A:6-2(f)* and *N.J.A.C. 4A:6-1.2(g)*.

On appeal to the Civil Service Commission (Commission), Wagner asserts that he should be entitled to compensation for the 64 hours of unused vacation days for 2012. In this regard, he argues that pursuant to an "agreement between [his] Union CWA and the Department of Transportation," he is entitled to that benefit time since he had earned it. Wagner maintains that although he was paid for the time he "earned," i.e. the 13.5 hours, he was not paid for the 64 hours he was "entitled to." Additionally, Wagner argues that *N.J.A.C. 4A:6-1.5* does not apply

since he was not on a "leave of absence without pay" since he had not applied for any leave.

Moreover, Wagner argues that *N.J.A.C.* 4A:6-1.2(g) only applies to "active time" and not to "suspension time," and thus, the appointing authority should have asked him if he wanted to "cash out" the vacation leave he was entitled to in 2013. Wagner asserts that he understands that he could have used his vacation leave during his indefinite suspension, but that the appointing authority intentionally withheld that information from him, in order to save it some money. Wagner also maintains he was never made aware that he would lose the 64 hours of vacation leave from 2012 at any time during his indefinite suspension.

The appointing authority, despite being provided the opportunity, did not submit any arguments for the Commission to review.

Official personnel records indicate that, upon his resignation, Wagner received \$229.53 for seven hours of earned compensatory time and \$442.67 for 13.5 hours of vacation time.

CONCLUSION

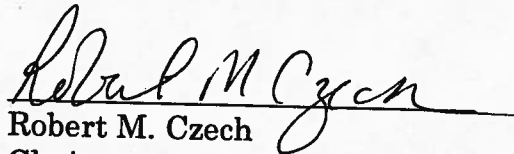
In the instant matter, Wagner argues that he should be compensated for 64 hours of unused vacation time from 2012 since he was not given an opportunity to utilize the unused time. However, pursuant to *N.J.S.A.* 11A:6-2(f) and *N.J.A.C.* 4A:6-1.2(g), vacation leave not taken in a given year can only be carried over to the following year. See *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). Thus, since the accumulation of vacation leave is statutory, it cannot be relaxed by the Commission. Additionally, although Wagner argues that he had never requested a "leave of absence," it must be noted that he was indefinitely suspended without pay due to pending criminal charges, and thus, was temporarily separated from employment. See *N.J.A.C.* 4A:1-1.3. Moreover, to credit Wagner's argument would be to treat individuals temporarily separated from employment due to suspension better than those employees on leave of absence for any other reason. Clearly, that circumstance cannot be the intent of the rules. Finally, there are no provisions in Civil Service law or rules that permit an employee to "cash out" unused vacation time that cannot be carried forward or require an appointing authority to permit an employee to use paid leave while out on suspension. Consequently, Wagner has not established his entitlement to any additional compensation.

ORDER

Therefore, it is ordered that this appeal 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 4TH DAY OF MARCH, 2015



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