



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Teresa Pimpinelli,
Casino Control Commission

Administrative Appeal

CSC Docket No. 2015-3290

ISSUED: **NOV 15 2016** (SLD)

Teresa Pimpinelli, an Attorney with the Casino Control Commission, appeals the adjustment of her leave allowances due to an unpaid leave of absence.

By way of background, as an employee in the unclassified title of Attorney, the appellant was entitled to 140 hours (7 hours multiplied by 20 days) of vacation leave and 105 hours (7 hours multiplied by 15 days) of sick leave, per year, which was credited on January 1, 2015. On February 2, 2015, the appellant went on an unpaid leave of absence, and she returned to work on March 16, 2015. As a result of her unpaid leave of absence, her vacation leave was reduced by 23.3 hours (3.34 days) of vacation leave and 17.5 hours (2.5 days) of sick leave. See *N.J.A.C. 4A:6-1.5(b)*. In this regard it was determined that since the appellant was not on the payroll from the 9th through the 23rd day of the month, she was not entitled to any leave time for the month of February and March. See *N.J.A.C. 4A:6-1.5(b)*.

On appeal, the appellant argues that the proration of her leave time was incorrectly calculated. The appellant maintains that she was on an unpaid leave of absence from February 2, 2015 through March 15, 2015, for a total of 30 working days. The appellant argues that the amount of leave time that was deducted seems "inflated" since she was only out of pay status for 30 working days. Specifically, she asserts that since she does not earn 3.33 vacation days and 2.5 sick days for every 30 working days, that amount of time should not have been deducted from her leave balances in the instant matter.

Additionally, the appellant argues that the advice given by this agency in a June 11, 2011 memorandum,¹ concerning the proration of leave time was illogical and contrary to the plain language of *N.J.A.C. 4A:6-1.5(b)*. The appellant maintains that her unpaid leave of absence spanned two full pay periods and two half pay periods. As a result, she maintains that for 10 of the 30 days, she was in pay status for pension calculation purposes. Therefore, she maintains that the illogicality and patently unfair consequences of the interpretation of *N.J.A.C. 4A:6-1.5(b)* is evident in analyzing the adjusted leave time for March.

Moreover, she asserts that in *In the Matter of David Berkley* (CSC, decided May 1, 2013), the Civil Service Commission (Commission) relaxed the provisions of *N.J.A.C. 4A:6-1.5(b)*, to provide an employee with a half month's allowance even though he was not in pay status from the 9th through the 23rd days of the month, as he was in pay status for 18 calendar days, which was more calendar days than the time period encompassed by the 9th through the 23rd days of the month. The appellant asserts that she was in pay status for 17 days² in March, and thus she should have earned a full month of leave time for March. Therefore, she maintains that her time should have only been prorated by 11.8 hours of vacation leave and 8.8 hours of sick leave.

In response, the appointing authority reiterates that the appellant's leave allowances were correctly calculated based on the June 21, 2011 advice received from this agency which indicates that *N.J.A.C. 4A:6-1.5(b)* was to be strictly interpreted and therefore, the 9th through the 23rd referred to actual dates, and not the number of days worked. The appointing authority notes that for the month of February, the appellant was not in pay status for all but one day, and therefore did not qualify for any earned leave time. It maintains that for the month of March, the appellant was only in pay status for 16 days, and not the 23 needed to earn a full month's allotment of leave time, and she was not in pay status from the 9th through the 23rd day of the month so she was not entitled to a half month's allowance. The appointing authority noted that the appellant worked 11 days in March, which was equivalent to the number of working days encompassed between the 9th and 23rd day of March, and therefore, it would not object to the Commission finding good cause to relax the provisions of *N.J.A.C. 4A:6-1.5(b)*, as it did in *In the Matter of David Berkley, supra*, and provide her with a half month's allotment of leave time for March. However, it maintains that, even if the Commission found good cause to relax the provisions of *N.J.A.C. 4A:6-1.5(b)*, the appellant would not be entitled to

¹ The June 21, 2011 memorandum regarding earning benefit time while on an unpaid leave of absence, indicated that *N.J.A.C. 4A:6-1.5(b)* was to be strictly interpreted and therefore, the 9th through the 23rd referred to actual dates, and not the number of days worked. However, the advice also noted that the other part of the rule which indicated that an individual who was in pay status for greater than 23 days in the month would be entitled to a full month's worth of leave time, did not require that the 23 days be served consecutively.

² Although the pay period began on March 15, 2015, the appellant did not return to work until March 16, 2015. Therefore, she was in pay status for 12 work days or 16 calendar days.

the full month's allotment as she asserts. Finally, with regard to the appellant's arguments that her entitlement to pension benefits should also entitle her to additional leave time, the appointing authority notes that Civil Service law and rules provide for the calculation of pension benefits and leave time allowances differently, and thus it is irrelevant how her pension benefits were calculated.

CONCLUSION

N.J.A.C. 4A:6-1.5(b) provides that:

An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

Initially, it is noted that the appointing authority correctly calculated the proration of the appellant's leave time for February and March 2015. However, the Commission does not agree that the calculation of her pension benefits is relevant to the issue in this matter, as the sole issue is the calculation of her leave time while on an unpaid leave of absence. Rather, the calculation of leave time while on an unpaid leave of absence is specifically set forth in *N.J.A.C.* 4A:6-1.5. Moreover, in *In the Matter of Janet McSloy* (CSC, decided May 26, 2010), the Civil Service Commission (Commission) noted that *N.J.A.C.* 4A:1-1.3 defined "days" as "calendar days unless otherwise specified." Therefore, the Commission found that the "9th" and "23rd" in the rule referred to actual dates of the month and not number of days worked and since McSloy was not in pay status from the 9th through the 23rd, a full month's leave allowance was properly deducted. The Commission also noted that even if the rule referred to the number of days worked, McSloy had only been in pay status for eight days during the month in question. Therefore, as the appellant was on an unpaid leave of absence from February 2 through March 15, 2015, she was not entitled to any leave time for the months of February and March as she was not in pay status from the 9th through the 23rd of either month.

However, in *In the Matter of David Berkley, supra*, the Commission relaxed the provisions of *N.J.A.C.* 4A:6-1.5(b), to provide an employee with a half month's allowance even though he was not in pay status from the 9th through the 23rd days of the month, as he was in pay status for 18 calendar days, which was more calendar days than the time period encompassed by the 9th through the 23rd days of the month. See, also, *In the Matter of Mildred Davis* (CSC, decided October 7, 2015). In the instant matter, the appellant similarly was in pay status for 16

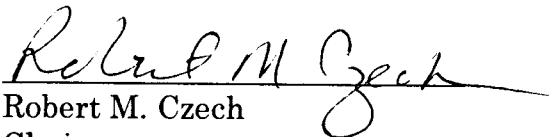
calendar days in March, which are more calendar days than the 15 day time period encompassed by the 9th through the 23rd days of that month. It seems patently unfair to penalize this employee by not providing her with any prorated leave time for March, despite working more days than are encompassed within the required dates, simply because the dates she worked were not within those required dates. Moreover, *N.J.A.C. 4A:6-1.5(b)* also provides that an employee who works more than 23 days earns a full month's allotment of leave time. *N.J.A.C. 4A:1-1.2(c)* provides that the Commission may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes. Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C. 4A:6-1.5(b)* and credit the appellant with one-half month's allowance of sick and vacation leave time for March 2015.

ORDER

Therefore, it is ordered that this appeal be granted in part.

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 10TH DAY OF NOVEMBER, 2016



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