



STATE OF NEW JERSEY

In the Matter of Paul Toppin,
Department of Environmental
Protection

CSC Docket No. 2024-1784

**FINAL ADMINISTRATIVE ACTION
OF THE CHAIR/
CHIEF EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION**

Request for Waiver of Repayment of
Salary Overpayment

ISSUED: January 6, 2025 (EG)

Paul Toppin, a Conservation Police Officer 3 with the Department of Environmental Protection (DEP), requests a waiver of repayment of a salary overpayment pursuant to *N.J.S.A. 11A:3-7*, which provides that when an employee has erroneously received a salary overpayment, repayment may be waived based on a review of the case.

By way of background, the petitioner, a then Conservation Police Officer 2, was at Step 10 on the salary schedule covering employee relations group K with a salary of \$100,222.24. On November 19, 2022, the petitioner was promoted to Conservation Police Officer 3 which placed him under the salary schedule for group J. In an April 17, 2022, decision, an Arbitrator appointed by the Public Employment Relations Commission (PERC) to issue an award concerning the successor collective negotiation agreement which covered the petitioner's title, indicated in his decision that he was denying the New Jersey Superior Officers Association (NJSOA) proposal that required promotional salary calculations be done in accordance with Civil Service rules. However, in the award section, he indicated that he was granting the NJSOA's proposal regarding promotional salary calculations. In a subsequent clarification of the Interest Arbitration Award, the Arbitrator specifically indicated that he did not find that the required promotional salary calculations be done in accordance with Civil Service rules. Rather, the Arbitrator determined that promotional salary calculations were to be done in accordance with the agreed upon contract provisions and that his statement to the contrary in the award section was an error. *See*

N.J.A.C. 4A:3-4.9(a). The contract provision specified that a salary increase upon promotion is considered the lowest step of the new salary guide with an increase in salary from the salary that the employee was receiving at the time of promotion. PERC affirmed this Interest Arbitration Award on June 30, 2022. Nevertheless, the petitioner began receiving an adjusted group J, Step 9 salary of \$112,142.56, on November 19, 2022 in error. In accordance with the contract provisions, the petitioner was thereafter correctly placed at Step 7, with a salary of \$104,130.20. As such, it was ultimately determined that his salary overpayment was \$7,020.40.

In his request, the petitioner argues that the three criteria for a waiver of salary overpayment under *N.J.A.C.* 4A:3-4.21 have been met. He asserts that he was unaware that he had been overpaid and that it occurred due to an administrative error. Additionally, the petitioner maintains that the salary and step placement he received was the major contributing factor in his accepting the promotion and had the error been caught during his working test period he would have requested to return to his prior position. He presents that paying back the salary overpayment even with a repayment schedule would cause an economic hardship as a single parent supporting college bound dependents. Further, he submits that his household income is \$4,456.47 per month and his expenses are \$5,219.63. These expenses include mortgage, college, taxes, electricity, insurance, groceries, internet, phone, gym, and credit cards. He provides copies of bills.

CONCLUSION

N.J.A.C. 4A:3-4.9 states the following:

- (a) Unless a different salary adjustment is established in a collective negotiations agreement, the following provisions shall be applied when employees are appointed to a title with a higher class code, except that in no event shall such adjustment result in a higher salary than that provided for in this section.
- (b) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determinations. (See (g) below). This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;
 2. Employees are serving in a title which is reevaluated to a higher class code; or
 3. Employees are appointed to a title with a higher class code, when the conditions in (b)1, 2, or 3 above are not applicable, provided the Chairperson or designee finds the following criteria are met:
 - i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and
 - ii. The service in the lower title provided significant preparation and training for service in the higher title.
- (c) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (b) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

The petitioner's salary was initially improperly calculated utilizing *N.J.A.C.* 4A:3-4.9(b) and (c) as indicated above. However, as the Arbitrator clarified, any employee who is promoted to any job title represented by the NJSOA shall receive a salary increase in accordance with the negotiated contract terms. *N.J.A.C.* 4A:3-4.9(a) permits collective negotiation agreements to supersede the salary adjustments provided for in this code section. In this regard, the petitioner's position of Conservation Police Officer 3 with the DEP is represented by NJSOA. The contract stipulates that a salary increase upon promotion is to the lowest step of the new salary guide with an increase in salary from the salary that the employee was receiving at the time of promotion. It is noted that the use of this methodology in determining the proper salary for an advancement to group J for positions represented by the NJSOA was also indicated in the salary regulations outlined in the Fiscal Year 2022 Compensation Compendium. Thus, the correction of the error in the petitioner's salary step placement and salary was proper and correct as it is clear that the initial application of *N.J.A.C.* 4A:3-4.9(b) and (c) was in error.

With regard to the salary overpayment, *N.J.A.C.* 4A:3-4.21 provides as follows:

- (a) The Civil Service Commission may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
 2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
 3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that all of the factors outlined in *N.J.A.C.* 4A:3-4.21 must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

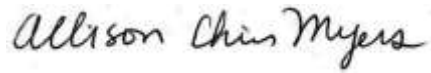
In this matter, the petitioner argues he should be held harmless from a salary overpayment action under these circumstances. However, other than his mere statements, has not provided sufficient evidence to support a claim of actual economic hardship. In this regard, the petitioner's current salary is \$120,495.96, and he has not established that the third prong of the above rule is satisfied. Though the petitioner has shown his expenses, it is not clear that these expenses are essential and could not be lessened. Moreover, the appointing authority and the petitioner are not precluded from setting a reasonable repayment schedule over an extended period of time. Accordingly, as the third criterion has not been met under *N.J.A.C.* 4A:3-4.21(a), the request is denied. However, the DEP is encouraged to set a reasonable repayment schedule to allow for the least economic impact on the petitioner.

ORDER

Therefore, it is ordered that these requests be denied.

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

DECISION RENDERED ON
THE 3RD DAY OF JANUARY, 2025



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