



STATE OF NEW JERSEY

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

In the Matter of Maryanne Seward,
Department of Law and Public
Safety, Division of State Police

Request for Waiver of Repayment of
Salary Overpayment

CSC Docket No. 2020-1460

ISSUED: OCTOBER 2, 2020 (ABR)

The Department of Law and Public Safety (LPS), Division of State Police, on behalf of Maryanne Seward, a Technical Assistant 2, 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, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

By way of background, the appointing authority permanently appointed Seward to the title of Technical Assistant,¹ effective February 18, 2016. Subsequently, the appellant filed a request for a classification review with the Division of Agency Services (Agency Services). Agency Services reviewed all documentation supplied and determined that the appropriate title for her position was Technical Assistant 2,² effective May 13, 2017.

On July 3, 2018, LPS' Office of Human Resources issued a Personnel Action Memorandum notifying the appellant of the correction to her title and salary, retroactive to May 13, 2017. It is noted that pursuant to this action and the April 16, 2018 Memorandum of Agreement (MOA) between the State and the Communications Workers of America,³ the salary she was entitled to as a Technical Assistant immediately prior to her reclassification was \$45,338.13 (step 8, stage range A12) and her salary as a Technical Assistant 2 became \$50,930.37 (step 5, salary range P17).

¹ The title of Technical Assistant 3 was retitled Technical Assistant, effective March 3, 2018.

² The title of Technical Assistant 2, Community Affairs was retitled Technical Assistant 2, effective February 3, 2018.

³ The MOA provided retroactive increments to eligible employees for the period between July 1, 2015 and April 4, 2018.

Consequently, she was entitled to differential pay of \$7,017.49. However, she was further informed that since her prior title of Technical Assistant was a “35” title, but her current title was a “NE” title, she was no longer entitled to cash compensation for a portion of the overtime hours she worked after May 12, 2017. In this regard, it is noted that employees in NE (non-limited, non-exempt) titles are not normally eligible for cash compensation for overtime prior to working 40 hours. *See N.J.A.C. 4A:3-5.3, 5.5 and 5.7.* Rather, employees in NE titles who meet unusual work time requirements not in excess of 40 hours in a workweek may generally, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time. *See N.J.A.C. 4A:3-5.3(d)2.* Seward worked and was paid for 371 hours of overtime as a Technical Assistant between May 13, 2017 and July 6, 2018. However, based on the change to Seward’s workweek, she was no longer entitled to payment for 244.5 hours of overtime for work performed beyond her regular work hours, as those hours did not exceed the 40-hour threshold required for cash overtime payments for an NE title. Rather, she was notified that pursuant to *N.J.A.C. 4A:3-5.3(d)2* she was to be credited for those hours with compensatory time. Therefore, she was told that she would have to repay the \$8,150.32 she received in overtime compensation for those 244.5 hours. In July 2018, the appointing authority advised Seward that she could wait to repay this sum until she received any retroactive payments due to her pursuant to the April 16, 2018 MOA. On October 26, 2018 and November 9, 2018, Seward received payments totaling \$7,017.49 for retroactive differential back pay for the period between May 14, 2016 and July 6, 2018. The appellant has not remitted any portion of the \$8,150.32 overpayment, as the appointing authority placed her repayment obligation on hold pending the outcome of the instant appeal.

On appeal, the appointing authority maintains that Seward did not know that the classification review would result in a change to her workweek which would preclude her from earning overtime income. It avers that she meets the requirement for a waiver provided under *N.J.A.C. 4A:3-4.21*.

CONCLUSION

N.J.A.C. 4A:3-4.21 Salary overpayments: State service, provides as follows:

- (a) The [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.

The appointing authority requests a waiver of the salary overpayment since Seward was not aware that prevailing in her classification appeal could require her to remit payment for overtime compensation she received during the pendency of her classification review. The rule provides that an overpayment that resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status, may be waived. See *N.J.A.C. 4A:3-4.21(a)2*. However, the overpayment in the instant matter was not due to any specific administrative error. Rather, the overpayment was the result of the classification review, which found that the correct title for Seward's position was Technical Assistant 2, a "NE" title, rather than Technical Assistant, a "35" title.

Moreover, neither Seward nor the appointing authority has established that the repayment amount will result in economic hardship to Seward, as there is no specific information about her economic situation. See *In the Matter of Ruth Samonski* (Commissioner of Personnel, decided July 5, 2005) (Waiver of repayment of a salary overpayment in the amount of \$20,568.40 for improperly receiving SLI benefits denied, where the appellant failed to provide any information to establish that the repayment would cause an economic hardship). Compare, *In the Matter of Betty Munoz* (Commissioner of Personnel, decided March 16, 2000) (Waiver of repayment of a salary overpayment that represented 3.9% of the gross salary of an employee who was a single parent with two children granted); *In the Matter of Peter Spencer* (Commissioner of Personnel, decided December 13, 1996) (Waiver of salary overpayment granted since repayment would cause an economic hardship based on employee's level of compensation). Additionally, although the repayment amount in this matter is \$8,150.32, Seward received a \$7,017.49 payment for differential back pay and retroactive increments in October 2018 and November 2018, leaving a difference of \$1,132.83. Moreover, the appointing authority has indicated that

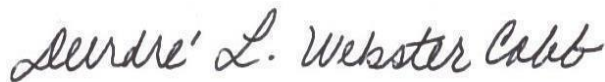
Seward will be compensated with compensatory time upon receipt of her repayment for the 244.5 hours that she worked, but is no longer entitled to overtime compensation for as noted above. Regardless, the appointing authority and the appellant may establish a reasonable schedule for the \$8,150.32 repayment in order to lessen any hardship resulting from this obligation.

ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the salary overpayment for Maryanne Seward 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 30TH DAY OF SEPTEMBER, 2020



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