



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Andrew Baker,
Department of Human Services

CSC Docket No. 2014-1640

Request for Reconsideration

ISSUED: **OCI 23 2014**

(SLD)

Andrew Baker requests reconsideration of the attached final administrative decision, rendered on November 7, 2013, which denied his appeal regarding the adjustment of his leave allowances upon his resignation.

On January 1, 2010, the petitioner's leave balances were credited, in relevant part, as follows: 120 hours (15 days) of sick time, 120 hours (15 days) of vacation time and 24 hours (three days) of administrative leave time. The petitioner was also credited with 30 hours (3.75 days) of Paid Leave Bank (PLB) time by August 2010. Thereafter, the petitioner used 94.75 hours of sick time, 60 hours of vacation time and 16.75 hours of administrative leave. The petitioner went on a leave of absence without pay, effective May 12, 2010 and he resigned, effective July 15, 2011, without returning from the leave of absence. As a result of his leave of absence and his eventual resignation, the petitioner's leave balances were prorated to 40 hours of sick time and 40 hours of vacation leave, leaving him with negative balances of 54.75 hours of sick leave and 20 hours of vacation leave. See *N.J.A.C. 4A:6-1.5(b)*. However, because the petitioner had 30 hours of PLB, one hour of compensatory time and 7.25 hours of administrative leave remaining, those amounts were credited towards his negative balances leaving him with only a negative balance of 36.50 hours of sick leave. Subsequently, on February 3, 2012 the petitioner was notified that he had utilized more vacation and sick leave than he had earned due to his resignation and as a result, he overdraw 4.56 days of vacation and/or sick leave for a total of \$648.14 which he needed to reimburse DHS for.

On appeal to the Civil Service Commission (Commission), the petitioner argued that his use of sick, vacation, and other leave time was approved by his supervisor and therefore, he could not have been overdrawn.

Based on the foregoing, the Commission noted that, *N.J.A.C.* 4A:6-1.2(a)2 and 4A:6-1.3(a)2 specifically provide that after the first year of employment, "at the beginning of each calendar year in *anticipation of continued employment*, employees shall be credited" with their vacation and sick leave allotments. As a result, on January 1, 2010, the petitioner was provided with his sick and vacation leave allotments for the year, on the belief that he would continue his employment for the whole year. However, since he did not remain in pay status for the full year, pursuant to *N.J.A.C.* 4A:6-1.5, his vacation and sick leave was to be prorated based on time earned since he was "liable for vacation and sick leave days taken in excess of their entitlements." Consequently, since the petitioner was on the payroll for four months, he earned 40 hours each of vacation and sick leave. However, he had already used 94.75 hours of sick time, 60 hours of vacation time and 16.75 hours of administrative leave prior to his leave of absence without pay. Therefore, since the petitioner utilized more vacation and sick leave than he had earned at the time he went on a leave of absence without pay, he was required to reimburse the appointing authority for that time pursuant to *N.J.A.C.* 4A:6-1.5. As a result, the petitioner's other leave time was appropriately used to reduce the amount of sick and vacation leave that was overdrawn in order to minimize the monetary amount that he would have to reimburse the appointing authority for. However, he was responsible for the remainder of the overdrawn amounts.

In the instant matter, the petitioner requests reconsideration due to his financial situation. Specifically, he asserts that he is currently on disability. In support, he submits a Social Security Administration Retirement, Survivors and Disability Insurance notice of award from 2011, notifying him of his entitlement to monthly disability benefits beginning October 2010, and the amount he would receive for June 2011. Additionally, the petitioner requests that the overpayment be waived due to the appointing authority's failure to notify him of the overpayment amount until more than one year after he resigned.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. The instant request for reconsideration appears to be based on the assertion that the Commission made an error in denying the petitioner's appeal. However, a review of the record in the instant matter reveals that reconsideration is not justified. In this

regard, the petitioner has failed to provide any documentation which establishes that the Commission's decision was contrary to the evidence presented. Instead, the petitioner merely reiterates his prior argument and claims that the Commission made an error in requiring him to reimburse the appointing authority for monies since he was not notified of the overpayment at the time of his resignation. However, the Commission does not agree. As noted in its previous decision, no vested or other rights are accorded by an administrative error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998).

Finally, with regard to the petitioner's assertion that he is unable to repay the overpayment because he is on disability and the "economy," *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 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 record clearly shows that administrative errors resulted in the salary overpayment. However, as noted above the petitioner cannot benefit from the error. Further, although the petitioner claims that repayment of the overpayment amount would result in hardship, the petitioner has failed to present any specific evidence,

such as his total monthly income and expenses, to substantiate his claim of hardship. *See In the Matter of Yvette Waugh, et al.* (Commissioner of Personnel, decided October 25, 1996) (Lack of documentation in support of claimed economic hardships did not warrant waiver of salary overpayment for employees erroneously awarded salary at the fourth step of the salary range). Additionally, the overpayment amount is only \$648.14. Although the petitioner was informed that he had to pay the entire amount as a lump sum, the appointing authority and the petitioner are encouraged to establish a more reasonable repayment schedule. Therefore, a sufficient basis does not exist to grant a waiver of the repayment at issue pursuant to *N.J.A.C. 4A:3-4.21*. Accordingly, the petitioner has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

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 22ND DAY OF OCTOBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission
Inquiries
and
Correspondence

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

Attachment

c: Andrew Baker
Jerri Casazza
Kenneth Connolly
Joseph Gambino

B-15



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of June Baker and
Andrew Baker, Department of
Human Services

Administrative Appeal

CSC Docket Nos. 2012-3668 and
2012-3669

ISSUED: NOV - 8 2013

(SLD)

June Baker and Andrew Baker, a former Nursing Services Clerk and Truck Driver Single Axle, respectively, with the Department of Human Services (DHS), appeal the adjustment of their leave allowances upon their resignations. Since these matters pertain to the same issues, the matters have been consolidated herein.

By way of background, on January 1, 2010, Mrs. Baker's leave balances were credited, in relevant part, as follows: 120 hours (15 days) of sick time plus 27 hours carried forward for a total of 147 hours; 120 hours (15 days) of vacation time plus 44.75 hours carried forward for a total of 164.75 hours; and 24 hours (three days) of administrative leave time.¹ Mrs. Baker was also credited with 56 hours (seven days) of Paid Leave Bank (PLB) time by August 2010 and had one hour of compensatory time. Thereafter, Mrs. Baker used 142.25 hours of sick time, 164.75 hours of vacation time, 24 hours of administrative time and 43 hours of PLB. Mrs. Baker went on a leave of absence without pay, effective October 4, 2010 and she resigned, effective August 29, 2011, without returning from the leave of absence. As a result of her leave of absence and her eventual resignation, her leave balances for 2010 were prorated to 90 hours of sick time and 90 hours of vacation leave, leaving her with negative balances of 25.25 hours of sick leave and 30 hours of vacation leave. See *N.J.A.C. 4A:6-1.5(b)*. However, because Mrs. Baker had 13 hours of PLB remaining, that amount was credited toward the negative balance of 30 hours of

¹ Since the appellants worked in 40 hour titles, their leave time was calculated as one day being equal to eight hours.

vacation leave, leaving her with a negative balance of 17 hours of vacation leave. Subsequently, on February 3, 2012, Mrs. Baker was notified that she had utilized more vacation and sick leave than she had earned due to her resignation and as a result, she overdraw 10.25 days of vacation and/or sick leave for a total of \$1,515.87 which she needed to reimburse DHS for.

On January 1, 2010, Mr. Baker's leave balances were credited, in relevant part, as follows: 120 hours (15 days) of sick time, 120 hours (15 days) of vacation time and 24 hours (three days) of administrative leave time. Mr. Baker was also credited with 30 hours (3.75 days) of Paid Leave Bank (PLB) time by August 2010. Thereafter, Mr. Baker used 94.75 hours of sick time, 60 hours of vacation time and 16.75 hours of administrative leave. Mr. Baker went on a leave of absence without pay, effective May 12, 2010 and he resigned, effective July 15, 2011, without returning from the leave of absence. As a result of his leave of absence and his eventual resignation, Mr. Baker's leave balances were prorated to 40 hours of sick time and 40 hours of vacation leave, leaving him with negative balances of 54.75 hours of sick leave and 20 hours of vacation leave. See *N.J.A.C. 4A:6-1.5(b)*. However, because Mr. Baker had 30 hours of PLB, one hour of compensatory time and 7.25 hours of administrative leave remaining, those amounts were credited towards his negative balances leaving him with only a negative balance of 36.50 hours of sick leave. Subsequently, on February 3, 2012 Mr. Baker was notified that he had utilized more vacation and sick leave than he had earned due to his resignation and as a result, he overdraw 4.56 days of vacation and/or sick leave for a total of \$648.14 which he needed to reimburse DHS for.

On appeal, the Bakers argue that their use of sick, vacation, and other leave time was approved by their supervisors and therefore, they could not have been overdrawn.

In response, the appointing authority asserts that the Bakers had overdrawn their sick and vacation time. Specifically, the appointing authority argues that since the appellants went on leave of absences and then resigned without ever returning to paid status, then in accordance with *N.J.A.C. 4A:6-1.5(b)*, their leave balances were prorated based on the length of time they were in paid status for 2010. As a result of the proration of their leave time, Mr. Baker had overdrawn 36.5 hours (4.56 days) of sick time and Mrs. Baker had overdrawn 25 hours (3.1 days) of sick time and 17 hours (2.1 days) of vacation time. Additionally, the appointing authority noted that Mrs. Baker was also overpaid for 40 hours (5 days) for pay period 21 of 2010 (the pay period in which she started her leave of absence). The appointing authority indicated that she was paid because the cut-off date for the "payroll proof" was also on October 4, 2010. In support, it submitted copies of the Bakers' handwritten Payroll Records for Calendar year 2010 and 2011. The Payroll Calendars indicate the amount and type of leave time utilized for each day and all leave balances. It also submitted a copy of Mrs. Baker's check-stub for pay

period 21, which indicates that she was paid the gross amount of \$1,197.91 for that pay period.

CONCLUSION

N.J.A.C. 4A:6-1.5, provides in part that:

- (a) Employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.
- (b) 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.

* * *

In the instant matters, the appellants argue that since their supervisors approved their leave requests, they could not have overdrawn their time. However, *N.J.A.C.* 4A:6-1.2(a)2 and 4A:6-1.3(a)2 specifically provide that after the first year of employment, "at the beginning of each calendar year in *anticipation of continued employment*, employees shall be credited" with their vacation and sick leave allotments. As a result, on January 1, 2010 both appellants were provided with their sick and vacation leave allotments for the year, on the belief that they would continue their employment for the whole year. However, since they did not remain in pay status for the full year, pursuant to *N.J.A.C.* 4A:6-1.5, their vacation and sick leave was to be prorated based on time earned since they were "liable for vacation and sick leave days taken in excess of their entitlements." Consequently, since Mrs. Baker was on the payroll for eight months, she earned 90 hours each of vacation and sick leave and Mr. Baker, who was on the payroll for four months, earned 40 hours each of vacation and sick leave. However, Mrs. Baker had already used 142.25 hours of sick time, 164.75 hours of vacation time, 24 hours of administrative time and 43 hours of PLB prior to her leave of absence without pay and Mr. Baker had already used 94.75 hours of sick time, 60 hours of vacation time and 16.75 hours of administrative leave prior to his leave of absence without pay. Therefore, since both appellants utilized more vacation and sick leave than they had earned at the time they went on a leave of absence without pay, they are required to reimburse the appointing authority for that time pursuant to *N.J.A.C.* 4A:6-1.5. In this regard, the appellants other leave time, *i.e.*, PLB, administrative and compensatory leave time, was appropriately used to reduce the amount of sick and

vacation leave that was overdrawn in order to minimize the monetary amount that they would have to reimburse the appointing authority for. However, they are responsible for the remainder of the overdrawn amounts. Accordingly, the appellants were correctly required to reimburse the appointing authority for all overdrawn leave time.

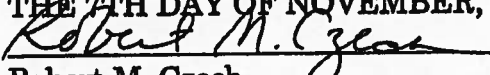
Finally, with regard to the additional five days that Mrs. Baker was inadvertently paid for, despite being on a leave of absence without pay, it is noted that no vested or other rights are accorded by an administrative error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). Moreover, pursuant to N.J.A.C. 4A:3-4.21, absent a waiver of such a salary overpayment, Mrs. Baker is required to reimburse the appointing authority for the days that she was overpaid.

ORDER

Therefore, it is ordered that these appeals 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 7TH DAY OF NOVEMBER, 2013



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: June Baker
Andrew Baker
Jerri Casazza
Kenneth Connolly
 Joseph Gambino