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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Stephen Hornikel,
Department of Human Services

Administrative Appeal

CSC Docket No. 2014-2988

ISSUED: NOV 06 2014 (SLD)

Stephen Hornikel, a Vocational Rehabilitation Counselor 1¹ with the Commission for the Blind and Visually Impaired, Department of Human Services, requests compensatory leave or overtime compensation for attending graduate school.

By way of background, on March 1, 2011, the appellant and the appointing authority entered into a signed agreement for tuition reimbursement (Agreement). Specifically, the Agreement provided, in part, that all Vocational Rehabilitation Counselors were required to possess either a Master's Degree in Vocational Rehabilitation Counseling or a current and valid certification as a Certified Rehabilitation Counselor issued by the Commission on Rehabilitation Counselor Certification. Therefore, the appointing authority agreed to pay the tuition, at an approved accredited college or university, for the appellant to attain either a Master's Degree in Vocational Rehabilitation Counseling or a current and valid certification as a Certified Rehabilitation Counselor issued by the Commission on Rehabilitation Counselor Certification. The appellant was to complete all of the required coursework within three years.

In May 2014, the appellant requested compensatory leave or overtime compensation in the amount of 318 hours for the time period from September 6, 2011 to April 30, 2014 for his attendance at classes for his Master's Degree. The appointing authority informed the appellant that there was no policy in place which

¹ The appellant's title is designated NE, which is a non-limited, non-exempt 35 hour work week title.

entitled employees to earn overtime for attending classes. Moreover, it asserted that overtime may only be approved prior to working the overtime, and therefore, his request was untimely.

On appeal to the Civil Service Commission (Commission), the appellant maintains that the Agreement specifically mandates that he attend classes to obtain his Master's Degree and that those classes were frequently outside of his normal work hours. Therefore, he worked full time, per verbal instructions from his supervisor. However, he argues that he was entitled to compensatory leave or overtime compensation for his attendance at those classes pursuant to the New Jersey Commission for the Blind and Visually Impaired, Department of Human Services, Staff Developmental Manual, Circular #9 part VI, which states that compensation for overtime worked will only be granted to an employee if the employee is mandated to attend a training or conference. *See also, N.J.A.C. 4A:3-5.7.*

In response, the appointing authority asserts that the appellant is not entitled to any overtime compensation for his attendance at graduate school. In this regard, it notes that Circular #9 part IX – Tuition Assistance Program, G – Release Time, specifically provides, in part, that courses for which tuition assistance is granted should be taken on the employee's own time, and that in the event that is impossible, reasonable efforts should be made to adjust the employee's work schedule to permit the employee to attend class and to make up the time in the same week. If the workweek cannot be adjusted, the employee may receive written authorization for up to four hours per week of (unpaid) release time to attend class. However, there is no policy which entitles employees to earn overtime for attending classes to obtain an undergraduate or graduate degree in any field.

Additionally, the appointing authority argues that the undergraduate or graduate level classwork is not the type of "training" that is contemplated by *N.J.A.C. 4A:3-5.7*. Rather, that training refers to the typical mandated training for all State employees. Thus the appellant's reliance on *N.J.A.C. 4A:3-5.7* is misplaced.

Finally, the appointing authority maintains that even if the Commission were to grant the appellant's request, the appellant had failed to provide sufficient documentation to support the requested hours. Moreover, the appointing authority maintains that it is untenable at this point to amend or modify his time keeping record since September 2011.

CONCLUSION

In the instant matter, the appellant argues that he should be provided 318 hours in compensatory leave or overtime compensation for his attendance at

graduate classes for his Master's degree pursuant to *N.J.A.C. 4A:3-5.7*. Additionally, the appellant argues that the appointing authority's Circular #9 part VI, which states that compensation for overtime worked will only be granted to an employee if the employee is mandated to attend a training or conference, also requires that he be provided with compensatory leave or overtime compensation for his attendance of the classes that the Agreement required. However, the Commission does not agree. *N.J.A.C. 4A:3-5.7* provides, in part, that:

(b) Eligibility for overtime compensation for training shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required by their employer to participate in job related training shall have such training time included in the total hours worked.
 - i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

* * *

N.J.A.C. 4A:6-4.3(a) provides examples of State Government training and education programs, such as agency specific technical and topical programs, health and safety programs, supervisory and management training, and programs mandated by State or federal statutes. *N.J.A.C. 4A:6-4.6(a)* provides in part that each State department or agency shall establish a tuition aid program, available to eligible employees to complete undergraduate, graduate, technical or supplemental coursework at an accredited educational institution which relate to current or planned job responsibilities. Moreover, as noted by the appointing authority, Circular #9 part IX – Tuition Assistance Program, G – Release Time, provides, in part, *that courses for which tuition assistance is granted should be taken on the employee's own time*, and that in the event that is impossible, reasonable efforts should be made to adjust the employee's work schedule to permit the employee to attend class and to make up the time in the same week. If the workweek cannot be adjusted, the employee may receive written authorization for up to four hours per week of (unpaid) release time to attend class. Based on the foregoing, it is clear that *N.J.A.C. 4A:3-5.7(b)* does not apply to the instant situation since the appellant was taking graduate level courses and not a State Government training and education program. Furthermore, Circular #9 also makes a distinction between training classes and attendance at an undergraduate or graduate level school for

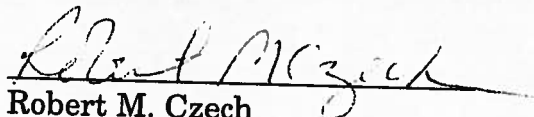
which tuition assistance is available. For the latter, Circular #9 specifically states that classes should be taken on the employee's own time or that the workweek should be adjusted to allow for the class time to be made up. Consequently, the appellant has not established any entitlement to compensatory leave or overtime compensation for his attending graduate level courses.

ORDER

Therefore, it is ordered that this request 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 6TH DAY OF NOVEMBER, 2014



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