



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Donna Deveney,
Department of Transportation

CSC Docket No. 2014-2154

ISSUED: **SEP 18 2014**

(SLD)

The Department of Transportation (DOT), on behalf of Donna Deveney, 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 appointed Deveney to the title Supervisor, Data Processing Technical Support (step 10, salary range S29, \$104,070).¹ Subsequently, the appellant filed a request for a classification review. The appellant pursued the matter of her reclassification with the Division of Classification and Personnel Management (CPM). CPM reviewed all documentation supplied by the appellant and performed a telephone audit of her position and determined that the appropriate title for her position was Supervisor, Information Technology, Help Desk, effective March 23, 2013. The appellant appealed her classification to the Civil Service Commission (Commission) seeking a Manager 1, Information Processing classification. In *In the Matter of Donna Deveney* (CSC, decided October 16, 2013), the Commission found that Deveney was properly classified as a Supervisor, Information Technology, Help Desk. Accordingly, the Commission ordered DOT to take the necessary steps to effectuate her appointment to the title of Supervisor, Information Technology, Help Desk, effective March 23, 2013, or to assign her duties commensurate with her permanent

¹ It is noted that agency records indicate that Deveney is still serving in the title of Supervisor, Data Processing Technical Support.

title of Supervisor, Data Processing Technical Support. The Commission further ordered DOT to notify CPM within 30 days of the date of the decision as to how it was proceeding in compliance with this decision. Finally, the Commission stated that the appointing authority should initiate steps to recoup the salary overpayment of the appellant from March 23, 2013 until the date Deveney was placed in the appropriate title.

Subsequently, CPM determined that the appropriate classification of Deveney's title was Manager 1, Information Processing (salary range M32), effective March 23, 2013. CPM indicates that the new classification was based on information submitted prior to the Commission's October 16, 2013 decision and multiple meetings with DOT.²

On appeal, DOT argues that a waiver of the repayment of the salary overpayment should be granted due to the lack of culpability on Deveney's part and the fact she had been performing the duties of the Manager 1, Information Processing title.

Deveney argues that a waiver of the overpayment should be granted since DOT had worked with this agency to ensure that she was placed in the proper title. Moreover, she asserts that the repayment of any amount would result in a hardship since she is a single mother with the full responsibility of three children, aged 12, 14 and 19. She notes that the 19 year old is "enrolled in the military and has not been able to work due to recruitment" and since he is not receiving any military pay, she is paying for his auto insurance and other costs of living for him. Deveney explains that her current bills (including a mortgage) equal almost her total net pay. Finally, she notes that she has a chronic illness, and does not qualify for donated leave, and therefore, once she exhausts her leave time, she does not receive any pay for her absences.

DOT agrees with Deveney that any repayment amount would result in a hardship and notes that Deveney is currently on an unpaid medical leave of absence.³ It notes that the overpayment amount owed is \$1,058.58.⁴

² It is noted that the position of Manager 1, Information Processing, that Deveney will encumber, is subject to increases to the management salaries based on the recent contract between the State and the union representing employees in certain State management titles.

³ Deveney will not be required to repay the salary overpayment during periods she is on unpaid leave.

⁴ This amount includes the management salary increases for the time period at issue.

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.

DOT requests a waiver of the salary overpayment since it claims that Deveney was not at fault for any delay in this matter. 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 due to a delay in the processing of the change the appellant's title. Therefore, the "error" in this matter is clearly exempted from consideration under *N.J.A.C. 4A:3-4.21*.

Moreover, although DOT and Deveney assert that any repayment amount would result in economic hardship to her, other than general statements, she has not provided any specific information concerning 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

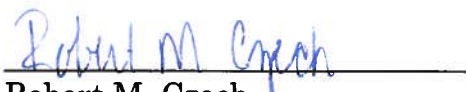
information to establish that the repayment would cause an economic hardship). *Compare, In the Matter of Betty Munoz* (Commissioner of Personnel, decided March 16, 2000) (Waiver of repayment of a salary overpayment that represented 3.9% of the gross salary of an employee who was a single parent with 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, the repayment amount in this matter is \$1,058.58, which is not a large sum given Deveney's salary. Further, since DOT has failed to set a repayment schedule, it cannot demonstrate that the amount Deveney would be required to pay per bi-weekly pay period would create a hardship to her. However, the appointing authority and Deveney are encouraged to set a reasonable repayment schedule for her to repay the \$1,058.58.

ORDER

Therefore, it is ordered that the request for a waiver of the repayment by Donna Deveney be denied. Further, it is ordered that Deveney's official personnel records be immediately corrected to reflect her correct titles and salaries during the relevant periods of time.

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 17TH DAY OF SEPTEMBER, 2014



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and
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