

B-4



In the Matter of Scott Jacobs,
Department of Children and Families :

CSC Docket No. 2015-10 :

STATE OF NEW JERSEY

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

**Request for Waiver of Repayment of
Salary Overpayment**

ISSUED: SEP 19 2014 (SLK)

Scott Jacobs, an employee with the Department of Children and Families (DCF), 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, personnel records indicate that the appellant had been serving provisionally in the position of Administrative Analyst 3 (salary range P21) since March 6, 2004 and that his permanent title is Administrative Analyst 4 (Data Processing) (salary range P19). The appellant has applied for promotional examinations for the title series Administrative Analyst six times, and dating as far back as February 22, 2006, he has been declared ineligible all six times. Additionally, there had been Board decisions, dating as far back as April 26, 2006, that had stated that Jacobs' duties did not provide him with the required experience to establish eligibility for the Administrative Analyst title series and that his position appeared to be misclassified. Therefore, the matter of petitioner's position classification was referred for review. Both Mr. Jacobs and the appointing authority received copies of these decisions. However, it was not until May 10, 2010, when the Division of State and Local Operations (SLO)¹ issued its classification determination that Technical Support Specialist 2 (salary range P20) was the appropriate title for his position. The determination was sent to the appointing authority. Although SLO's determination letter did not indicate that the petitioner was sent a copy, he was aware of the classification review as Mr. Jacobs

¹ SLO is now known as The Division of Classification and Personnel Management (CPM).

did complete a Position Classification Questionnaire (PCQ) and he was interviewed as part of a desk audit of his duties for the review. Further, there was no record that Jacobs appealed SLO's determination to the Commission. Thereafter, the petitioner appealed the determination that he was ineligible for the promotional examination for Administrative Analyst 3 (PS1214K) and staff from the Division of Appeals and Regulatory Affairs (DARA) sent him a letter on June 28, 2010 stating that the Division of Selection Services (Selection Services) had correctly determined that he was not eligible and that a desk audit determined that his current position would be appropriately classified as Technical Support Specialist 2. Then, in *In the Matter of Scott Jacobs, Administrative Analyst 3 (PS5246K)* (CSC, decided June 4, 2014), Mr. Jacobs appealed Selection Services' determination that he was ineligible for that promotional exam. The Commission denied his appeal and ordered the appointing authority to reclassify Jacobs' position to Technical Support Specialist 2 effective June 5, 2010. This resulted in him receiving a salary overpayment.² Subsequently, the petitioner submitted a request for waiver of repayment of salary overpayment.

In his request, Mr. Jacobs argues that he satisfies all the listed factors under *N.J.A.C. 4A:3-4.21*. Specifically, regarding criteria one, the employee being reasonably unaware of the error, the petitioner states that while he was aware of the pending classification review, he was never aware of the fact that a formal decision would be issued. Moreover, Mr. Jacobs claims that he was not aware of the decision and the negative impact it would have on his salary. Further, he highlights that until he received the Commission's June 4, 2014 decision, he was not aware that it was his responsibility to make any type of repayment and that he was he was in overpayment status as far back as June 5, 2010. The petitioner also argues that, regarding criteria two, the overpayment resulting from a specific administrative error, according to the SLO's May 10, 2010 determination letter, it was the appointing authority that was ordered to place him in the title of Technical Support Specialist 2, which it failed to do. He states that he should not be accountable for the appointing authority's inefficiencies and incompetence. Regarding criteria three, the terms of the repayment schedule resulting in economic hardship, Mr. Jacobs presents that he has a wife who is disabled, household bills, a car payment, and a mortgage and therefore to require him to pay \$12,721.83 over the next 99 pay periods, which is almost 4 years, would substantially and adversely impact his wife and himself. He maintains that if he, as the primary source of income in the household, has to make the repayment, he will not be able to help his wife with such things as medication and other household expenses as he currently does and that she will have to do without certain necessities. The petitioner highlights that he has worked for the State for over 30 years and that he plans on

² The appointing authority has calculated the salary overpayment as being \$12,731.83 between June 5, 2010 through May 30, 2014 and that the recoupment will take place over 99 pay periods at the approximate rate of \$128.60 per pay period.

retiring within the next five years. However, he indicates that with the overpayment, he cannot save for retirement and will have to work longer than anticipated. Mr. Jacobs also itemizes and submits bills for his monthly expenses to show the economic burden of making the \$128.60 repayment. The petitioner also presents that his salary has been reduced by \$123.94 per pay period and the total reduction of salary and the repayment equals a monthly reduction of \$505.08.

The appointing authority submits a letter of support and states that while the petitioner was aware of SLO's pending classification review, the determination did not list Mr. Jacobs as a recipient. Moreover, it highlights that it had every intention of complying with the reclassification determination, as evidenced by a letter it attaches; however, due to an unexplained, good faith error, it did not proceed with the implementation of the determination and it did not communicate the determination with him at that time. In other words, it explains that if it were not for its error, Mr. Jacobs would not be in this current situation. Further, it asserts that the amount of overpayment and the duration of the repayment schedule is onerous and will delay the petitioner's retirement plans.

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.

N.J.A.C. 4A:3-3.9(f)1 states, in pertinent part, that in State service, when a classification appeal is granted by the Commission, the effective date of implementation shall be "the pay period immediately after 14 days from the date an appropriate Civil Service Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission." This rule does not specifically indicate how to assign an effective date where such an appeal is denied or when the classification request, as in this matter, originated based on a request by one of the Commission's operating divisions.

Although the petitioner argues that he should be held harmless from a salary overpayment action as he was not aware that his position was reclassified by SLO, the record shows that he had submitted a PCQ and participated in a desk audit of his position on May 7, 2009. Thus, he was well aware that SLO was reviewing the classification of his position. Further, although SLO's May 10, 2010 determination letter was not addressed to him and the appointing authority states that it did not notify him of SLO's determination, staff from the Division of Appeals and Regulatory Affairs (DARA) sent him a letter on June 28, 2010, in reference to an eligibility appeal, advising Mr. Jacobs that SLO determined that his position was properly classified as Technical Support Specialist 2. In addition, rather than reclassifying the petitioner's position to the title of Technical Support Specialist 2 (salary range P20), the appointing authority kept Mr. Jacobs in the higher title of Administrative Analyst 3 (salary range P21) from June 5, 2010 through May 30, 2014, when he was finally appointed to his appropriate title, Technical Support Specialist 2. Therefore, Mr. Jacobs should have been aware that his position was misclassified at least by the end of June 2010.

Moreover, personnel records indicate that the petitioner had been serving as an Administrative Analyst 3 since March 6, 2004, despite SLO's and the Commission's determinations that his position should be reclassified. Additionally, Mr. Jacobs had applied for the title series Administrative Analyst six times, and dating as far back as February 22, 2006, he had been declared ineligible all six times. Further, there had been Commission decisions, dating as far back as April 26, 2006, that had stated that Jacobs' duties did not provide him with the required experience to establish eligibility for the Administrative Analyst title series and that his position appeared to be misclassified. Accordingly, the petitioner had been overpaid for the duties he performed since March 6, 2004 and given his current salary of \$69,662 over the proposed repayment schedule, he has not demonstrated economic hardship. However, SLO's classification determination which was not directly sent to Mr. Jacobs was not issued until May 10, 2010 and DARA's letter which cited SLO's classification determination in response to one of Mr. Jacobs'

eligibility appeals for the Administrative Analyst 3 position was not issued until June 28, 2010. In light of the foregoing circumstances, it is equitable to lessen the monetary impact of the reclassification on the petitioner. *See In the Matter of Adriane Neis* (CSC, decided November 22, 2011); *aff'd on reconsideration* (CSC, decided March 7, 2012). (The Commission assigned an effective date current to when CPM determined for a second time that Neis was misclassified and the appointing authority had not effectuated the determination). In this case, the effective date of Mr. Jacobs' reclassification to Technical Support Specialist 2 (salary range P20) should have been June 5, 2010, which was the beginning of the pay period immediately after 14 days from the date that SLO issued its classification determination on May 10, 2010. However, the petitioner was not sent a copy of SLO's determination letter and the appointing authority has indicated that it did not notify him of SLO's determination. Nonetheless, Mr. Jacobs was certainly aware of the salary overpayment upon receiving DARA's letter that was issued on June 28, 2010 that cited SLO's determination in response to an eligibility appeal for the Administrative Analyst 3 title. Therefore, in light of the circumstances above, the Commission will modify his effective date of appointment to Technical Support Specialist 2 to July 17, 2010.

ORDER

Therefore, it is ordered that the request for a waiver of the repayment by Scott Jacobs be granted in part and repayment of salary overpayment be assessed from July 17, 2010 through May 30, 2014.

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



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

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

Attachment

**c: Scott Jacobs
Linda Dobron
Kenneth Connolly
Joseph Gambino**