

B-148



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Kenneth Breiten

CSC Docket No. 2014-2430

Administrative Appeal

ISSUED: FEB 09 2015 (DASV)

Kenneth Breiten, a Trooper 1 with the Division of State Police, Department of Law and Public Safety, requests restoration of prior State service in order for his personnel record to reflect continuous service.

By way of background, effective April 28, 1997, the petitioner received a permanent appointment as a Probation Officer¹ with the Judiciary. He resigned in good standing, effective January 24, 2003, in order to prepare for training as a Trooper with the Division of State Police. On June 27, 2003, the petitioner received an unclassified appointment as a Trooper and eventually was promoted to Trooper 1 effective December 29, 2012.

In his request, the petitioner states that he began his training at the New Jersey State Police Academy (Academy) on Monday, January 27, 2003. His last day of work at the Judiciary was on Friday, January 24, 2003. He notes that, upon entering the Academy, his pension deductions, deferred compensation, and payments for health benefits continued to be withdrawn from his paycheck. Therefore, the petitioner requests that his prior service with the Judiciary be credited towards his years of State service for vacation leave purposes.

¹ The Probation Officer title was created on July 1, 1998. The petitioner's title was originally Case Monitor, Juvenile Offender.

In response, the Judiciary,² supports the petitioner's request. It states that the petitioner should be placed on a personal leave of absence without pay to account for his training at the Academy. It notes that the Vicinage considered the petitioner to be on a leave of absence until he successfully completed training.

CONCLUSION

The record demonstrates that the petitioner was appointed on April 28, 1997, as a Probation Officer with the Judiciary. He resigned in good standing, effective January 24, 2003, in order to prepare for training as a Trooper with the Division of State Police. On June 27, 2003, the petitioner received an unclassified appointment as a Trooper. The petitioner requests that his record be adjusted to reflect continuous State service, since he resigned in order to attend the Academy. The Judiciary supports the petitioner's request and indicates that the petitioner's record should reflect an unpaid leave of absence from January 25, 2003 through June 26, 2003.

Initially, it is noted that the Civil Service Commission (Commission) does not have jurisdiction over the vacation leave entitlement of unclassified employees with the Division of State Police. *See N.J.A.C. 4A:6-1.2(a)* (Full-time State employees *in the career service* shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service) (emphasis added). *See also N.J.S.A. 11A:6-2.* Thus, the part of petitioner's request regarding his vacation leave as a Trooper 1 cannot be determined by the Commission. However, the Commission may adjust a career service employee's record. In the present case, the Judiciary supports the petitioner's request. Moreover, it may grant a leave of absence without pay to a permanent employee for a period not to exceed one year pursuant to *N.J.A.C. 4A:6-1.10(a)*. Therefore, based on the foregoing and the fact that the the petitioner resigned his Probation Officer position in order to train as a Trooper with the Division of State Police, the petitioner's record should be adjusted to reflect an unpaid leave of absence from the Judiciary from January 25, 2003 through June 26, 2003. However, the petitioner's appointment date of June 27, 2003 with the Division of State Police remains unchanged. *See e.g., In the Matter of Ronald Mistretta* (MSB, decided June 6, 2007); *In the Matter of Patrick Balunis* (MSB, decided January 31, 2007); *In the Matter of Lawrence Williams* (MSB, decided February 22, 2006). *Compare, In the Matter of David Stewart* (MSB, decided October 6, 2004) (Career service employee's request for reconsideration to restore his prior State service denied, since he was not employed in any capacity by the State for approximately three weeks and opted to resign in good standing from his position as a Senior Correction Officer three weeks prior to accepting a position with

² The petitioner served in Vicinage 13, Somerset, Hunterdon, and Warren Counties. The appointing authority for that Vicinage responded to this matter.

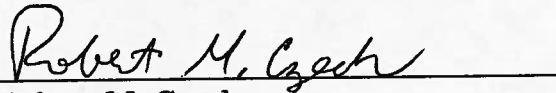
the Department of Environmental Protection, which minimized his loss of salary. Additionally, in that case, the petitioner's former appointing authority, the Department of Corrections, did not submit its approval of a leave of absence for the three-week period).

ORDER

Therefore, it is ordered that this request be granted in part. It is further ordered that Kenneth Breiten's employment record be adjusted to reflect an unpaid leave of absence from the Judiciary from January 25, 2003 through June 26, 2003. Additionally, that part of the petitioner's request to adjust his record for vacation leave entitlement purposes is dismissed for the Commission's lack of jurisdiction.

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 4TH DAY OF FEBRUARY, 2015



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