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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of S.F., Department of
Law and Public Safety

Request for Enforcement

CSC Docket No. 2015-1007

ISSUED: **MAR - 6 2015** (SLK)

S.F.¹, a former Deputy Attorney General with the Office of the Attorney General, Department of Law and Public Safety, petitions the Civil Service Commission (Commission) for enforcement of the decision rendered on February 12, 2014 ordering her approval for her retroactive participation in the Donated Leave Program (DLP).

By way of background, S.F. was on an approved leave of absence from January 3, 2013 to September 10, 2013 and returned to work on September 11, 2013. The appointing authority had approved S.F.'s participation in the DLP from August 12, 2013 to September 6, 2013. However, S.F. had indicated that she had exhausted her leave time on April 1, 2013 and thus, was eligible to participate in the DLP prior to the appointing authority's approval based upon her medical condition which necessitated her absence from work for 60 or more working days. The Commission agreed and permitted the petitioner's retroactive participation in the DLP. In so doing, the Commission ordered that the appointing authority take the appropriate action to notify employees of S.F.'s participation in the program, and, if she received donated leave time, that it be credited towards the time period where she was not receiving pay while on her leave of absence.

In her petition, S.F. requests that leave donations already submitted by Bonnie Apone, a former Investigator 2 for the Department of Banking and

¹ Personnel records indicate that S.F. separated from her position on January 24, 2014.

Insurance², and John Strachan, a Senior Highway Safety Specialist for the Division of Systems and Communications, Department of Law and Public Safety, be paid to her immediately. S.F. further requests that the Commission relax the rule limiting donations to 10 days and that Strachan's request to donate to her an additional 10 days of leave be approved. S.F. asserts that the appointing authority did not follow the Commission's order and did not place her on the Donated Leave List (List), making it impossible for her to receive donations. Further, S.F. claims that Apone had made a four-day donation for the limited time that she was "approved for participation" in the DLP upon her return from medical leave. However, the appointing authority has refused to process Apone's donated leave and has not provided any explanation why this donated leave was not processed. The appellant also claims that Strachan advised her that her name has not been placed on the List for participation in the DLP. Moreover, she asserts that Strachan submitted paperwork to donate 10 additional days, but the appointing authority would not process the donation, indicating that S.F. is no longer employed. S.F. argues that since the Commission's relief was retroactive, it is not relevant that she is no longer employed.

In response, the appointing authority states that S.F. was eligible to participate in the DLP on April 1, 2013. However, it represents that S.F. did not provide updated medical records in a timely manner which delayed her participation in the DLP until August 2013. The appointing authority highlights that when she received a donation of 10 days, it was credited to her account. It presents that S.F. returned to work on September 11, 2013 without any restrictions. Therefore, the appointing authority contends that S.F.'s participation in the DLP ceased on September 10, 2013. Thereafter in October 2013, it received one Donated Transfer Form for 20 days from Strachan and another one for four days from Apone. However, since her participation in the DLP ceased on September 10, 2013, the donor forms were returned without action.

CONCLUSION

In its February 12, 2014 decision, the Commission approved S.F.'s retroactive participation in the DLP. It further ordered that the appointing authority take the appropriate action to notify employees of S.F.'s participation in the program, and if S.F. received donated leave time, to credit it towards her leave of absence without pay. In its submission, the appointing authority has attempted to explain its actions from April 2013 through October 2013. However, it has not rebutted the appellant's assertion that it failed to notify staff after the Commission's decision that S.F. was approved for retroactive participation in the DLP. The fact that S.F. is no longer employed by the appointing authority is not relevant as she was employed by the appointing authority during the time period that the Commission approved her retroactive participation in the DLP. As such, the appointing

² Personnel records indicate that Ms. Apone retired on December 1, 2014.

authority shall immediately provide the proper notification to its employees of S.F.'s retroactive participation in the program. Further, the appointing authority shall place S.F.'s name on the List as a participant in the DLP for a period of time based on the date she would have been eligible to first receive donated leave, April 8, 2013 to the date she was finally approved for participation in the DLP, August 12, 2013, or four months. The appointing authority will provide such notification to its employees within 10 days from the issuance date on this order.

With respect to Strachan, since the petitioner is on the DLP list, he may resubmit a Donor Transfer Form if he wishes to donate leave time. *N.J.S.A. 4A:6-1.22(d)* provides that in State service, a leave donor may not donate more than 30 days to any one recipient. As Strachan has already donated 10 days, he may donate up to 20 additional days if he so chooses. However, as Apone has retired from State service, she does not have any time to donate.

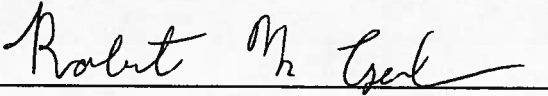
The Commission notes that it is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989).* While the Commission will not fine the appointing authority at this time for non-compliance, the Commission warns that if the appointing authority does not place S.F. on the List as a participant in the DLP and credit S.F. four days of pay within 30 days of receipt of this decision, it shall be assessed a fine of \$100 per day for each day of continued violation up to a maximum of \$10,000.

ORDER

Therefore, it is ordered that S.F.'s request be granted and that the appointing authority place S.F. on its Donated Leave List as a participant in the Donated Leave Program for four months from the issuance date of this order and notify employees of S.F.'s participation in the program. If the appointing authority does not comply with any aspects of this order within 30 days of the issuance of this decision, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

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 MARCH, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

c: S.F.
John Strachan
Mirella Bednar
Kenneth Connolly
Beth Wood
Joseph Gambino



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of S. F., Department of
Law and Public Safety

CSC Docket No. 2014-655

Administrative Appeal

ISSUED: FEB 18 2014 (BYM)

S. F., a Deputy Attorney General with the Office of the Attorney General, Department of Law and Public Safety, petitions the Civil Service Commission (Commission) for retroactive participation in the Donated Leave Program (DLP).

By way of background, S. F. completed a Certification of Health Care Provider for Employee's Serious Health Condition (Certification) dated April 8, 2013, to receive Federal Family and Medical Leave (FMLA) and for participation in the DLP. S. F.'s physician, Dr. Rene Gomez, certified that S. F. has been diagnosed with chronic migraine headaches. Dr. Gomez further indicated that S. F.'s condition is permanent and she would be incapacitated for a single continuous period of time due to her condition. In this regard, Dr. Gomez indicated that S. F. would be incapacitated from February 3, 2013 to September 1, 2013 and that she would need to attend follow-up appointments or work a reduced schedule due to her condition. Moreover, Dr. Gomez certified that S. F. could experience flare-ups of her condition and she should be permitted to be out of work on those occasions.¹ It is noted that S. F. was on an approved leave of absence from January 3, 2013 to September 10, 2013 and returned to work on September 11, 2013. S. F. was approved for participation in the DLP from August 12, 2013 to September 6, 2013.

In her petition to the Civil Service Commission, S. F. argues that she should have been approved for the DLP upon exhausting all of her accrued leave time. She

¹ Dr. Gomez estimated that the appellant may need to be out of work for two to four hours two times in a two week period.

indicates that she exhausted her leave time on April 1, 2013 and thus, was eligible to participate in the DLP based upon her medical condition which necessitated her absence from work for 60 or more work days. S. F. contends that she submitted the Certification to the appointing authority on April 8, 2013 and was advised on May 30, 2013 that the appointing authority was awaiting further medical documentation from Dr. Gomez. S. F. indicates that although a letter from Dr. Gomez dated June 24, 2013 was sent to the appointing authority, she still did not receive an answer from the appointing authority regarding her request for participation in the DLP. Additionally, S. F. asserts that she has met all the criteria for participation in the DLP in that she exhausted all of her accrued leave time and was absent for more than 60 work days. Moreover, she states that the appointing authority delayed her admission into the DLP and the additional information the appointing authority requested from Dr. Gomez was not required since she previously submitted the necessary documentation.

Although provided the opportunity, the appointing authority did not provide any additional information or arguments for the Commission to review.

N.J.A.C. 4A:6-1.22 (Donated Leave Program) states, in pertinent part, that a State employee shall be eligible to receive donated sick or vacation leave if the employee suffers from a catastrophic health condition or injury. A catastrophic health condition or injury is defined as a life threatening condition or combination of conditions or a period of disability required by an employee's mental or physical health or the health of the employee's fetus which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days. See *N.J.A.C.* 4A:6-1.22(b)1. *N.J.A.C.* 4A:6-1.22(a)2 provides that an employee shall be eligible to receive donated leave time if the employee has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off. *N.J.A.C.* 4A:6-1.22(d) provides that a leave recipient shall not receive any sick or vacation days on a retroactive basis. *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause in a particular circumstance in order to effectuate the purpose of Title 11A, New Jersey Statutes.

CONCLUSION

In the instant matter, the appellant's circumstances meet the established criteria for participation in the DLP. A review of S.F.'s initial medical documentation dated April 8, 2013, clearly indicates that she was diagnosed with a medical condition which resulted in her physician placing her out of work for more than 60 work days and she was on an approved leave of absence from January 3, 2013 through September 10, 2013. Therefore, at the time S.F. had exhausted all of her accrued sick, vacation and administrative leave time, she was eligible for participation in the DLP.

Accordingly, a thorough review of the record indicates that S.F. has sufficiently documented and supported her contention that she was eligible to participate in the DLP. Since S.F.'s participation was not approved until August 2013, good cause has been established to relax the provisions of *N.J.A.C. 4A:6-1.22* to allow her retroactive participation in the DLP. *See In the Matter of Carrie D. Lewis* (MSB, decided July 27, 2005).

ORDER

Therefore, it is ordered that this petition be granted and S.F. be approved for participation in the Donated Leave Program from January 3, 2013 to September 10, 2013. It is further ordered that the appointing authority take the appropriate action to notify employees of S.F.'s participation in the program. If S.F. receives donated leave time, it shall be credited towards her leave of absence without pay.

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 12th DAY OF FEBRUARY, 2014



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Civil Service Commission

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