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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Francis McHale

CSC Docket No. 2014-529

Request for Back Pay

ISSUED

MAR 06 2015

(EG)

Francis McHale, a Correction Sergeant with New Jersey State Prison, Department of Corrections, represented by William G. Blaney, Esq., petitions the Civil Service Commission (Commission) for a determination with regard to the back pay and benefits awarded in *In the Matter of Francis McHale* (CSC, decided June 26, 2013).

As background, the petitioner appealed his removal effective October 2, 2012, on charges, to the Commission. He was charged with inappropriate physical contact or mistreatment of an inmate, physical or mental abuse of an inmate, violation of a rule, procedure, administrative procedure and/or regulation, conduct unbecoming a public employee and other sufficient cause. Specifically, the appointing authority alleged that the petitioner used excessive force in two incidents involving inmate cell extractions.

The ALJ found that the videos of the cell extractions were inconclusive with respect to the actions and conduct of the inmates. Therefore, the ALJ based his determination on the credibility of the officers who were directly involved in the cell extractions. In this regard, the ALJ found that due to the inmates' conduct as testified to by the officers, the petitioner did not use excessive force during the cell extractions. Accordingly, the ALJ found the petitioner not guilty of any of the charges and reversed the removal. Upon its *de novo* review of the record, the Commission agreed with the ALJ's determination of the charges and with the

recommendation to reverse the removal. Therefore, the Commission ordered that the petitioner be reinstated and that he be granted back pay, benefits, seniority, and reasonable counsel fees.

Initially, the petitioner requested enforcement of the back pay and counsel fees award. Subsequently, the parties agreed upon the counsel fees and the majority of the back pay amount. The only items still in question are the petitioner's request for reimbursement of his out-of-pocket medical expenses and a payment for an expert witness. The petitioner submits an Amended Certification dated September 13, 2013, in which he requests repayment for the following medical expenses he would not have incurred but for his wrongful termination: \$5,416.35 in Cobra Health Insurance premiums through December 2012; \$4,747.74 for subscribing to his wife's medical insurance; \$100 co-pay for hospital visit; \$428.88 for an emergency room visit; \$51.41 bill for physician for emergency room visit; and \$609.02 for x-rays. The petitioner also requests \$2,500 for an expert witness who testified during his hearing. In support of his requests, the petitioner submits medical bills and a copy of the check given to the expert witness.

The appointing authority, despite being provided the opportunity, failed to provide any arguments or evidence for the Commission to review in this matter.

CONCLUSION

Pursuant to *N.J.A.C. 4A:2-2.10(d)*, back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal. Additionally, *N.J.A.C. 4A:2-2.12(g)* provides that reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses. Reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses.

In the instant matter, the petitioner claims that he is entitled to all of his out-of-pocket medical expenses. The Commission does not agree. The petitioner is entitled to the \$5,416.35 he paid in Cobra Health Insurance premiums. However, *N.J.A.C. 4A:2-2.10(d)* only provides for reimbursement of payments made to *maintain* health insurance coverage. The petitioner's entitlement to reimbursement for maintaining health insurance coverage does not apply to any medical expenses incurred during the period of his separation from employment from the appointing authority. *See e.g., In the Matter of Shannon Stoneham-Gaetano and Maria Ciufu* (MSB, decided April 24, 2001). Thus, the petitioner is not entitled to reimbursement for the monies he paid to doctors, hospitals, or for other

services. With regard to the petitioner's request to be reimbursed for premiums paid to subscribe to and maintain his health coverage through his wife's health insurance, the Commission has previously determined that reimbursement of premiums paid to an employee's spouse's health insurance plan to maintain his or her health insurance is not authorized under *N.J.A.C. 4A:2-2.10(d)*. See *In the Matter of Frank Taylor* (CSC, decided April 17, 2013). Therefore, the petitioner would not be entitled to reimbursement for any monies that were paid to maintain his health insurance from his wife's coverage. Further, *N.J.A.C. 4A:2-2.12(g)* clearly indicates that the petitioner is entitled to the \$2,500 for the expert fee.

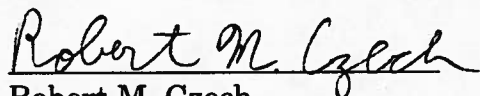
Accordingly, upon review of the evidence presented, the Commission finds that the petitioner is entitled to \$7,916.35 for maintaining his health insurance and in expert witness fees.

ORDER

Therefore, it is ordered that the appointing authority pay Francis McHale \$7,916.35 within 30 days of issuance of this decision.

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



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