



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Richard Latham, *et al.*, Department of Corrections

Administrative Appeals

CSC Docket Nos. 2016-3614, *et al.*

ISSUED: AUG 17 2017 (DASV)

Richard J. Latham, Brian W. Hartem, Frank Grillo, Thomas M. Jardine, and Adam Veltre, Senior Correction Officers with the Department of Corrections (DOC), represented by Colin M. Lynch, Esq., appeal the appointing authority's proration of paid leave days as a result of their placement on Workers' Compensation leave.

By way of background, the appellants are Senior Correction Officers with the DOC and received permanent appointments on various dates between 1993 and 2008. On appeal to the Civil Service Commission (Commission), the appellants submit that they were injured at work and placed on Workers' Compensation leave. Prior to such leave, they exhausted their yearly allotment of sick, vacation, and/or administrative leave. Because they were on Workers' Compensation leave for the latter portion of the year, the appointing authority required them to pay back the vacation and sick leave that they previously took. The appointing authority had asserted that the appellants did not accrue the paid leave days as a result of their Workers' Compensation leave. Moreover, when the appellants returned to work, they were not credited their paid vacation and sick leave until the amount of leave used in excess of the prorated entitlement was reimbursed. However, the appellants argue that their Workers' Compensation leave is a paid leave of absence for purposes of *N.J.A.C. 4A:6-1.5* and their allotted leave days should not have been prorated upon their return to work. The appellants further contend that even if they were deemed in "no pay" status during their Workers' Compensation leave, their leave should not be considered "unpaid leave." In support of their argument, the appellants cite *In the Matter of Thomas M. Jardine and Karriem Beyah* (CSC, decided August 13, 2014). In that case, the DOC denied the appellants an increase

of their vacation leave allotment, as it determined that taking Workers' Compensation leave did not deem the appellants' service as "continuous" for receipt of the increased leave pursuant to *N.J.A.C.* 4A:6-1.2. Upon review, the Commission found that for payroll accounting, the appellants were properly considered in "non-pay status" as they were not receiving their salary. Nevertheless, the Commission indicated that employees who are receiving Workers' Compensation benefits do not cease being employees regardless of whether they are deemed to be in "non-pay status." The Commission determined, among other things, that it would be inconsistent for the appellants' service not to be deemed continuous when the appointing authority made pension contributions and the time period was considered in the calculation of retirement benefits. Accordingly, the Commission ordered that the appellants' vacation leave balances be adjusted. However, the Commission noted that the issue of proration under *N.J.A.C.* 4A:6-1.5(b) was not germane in *Jardine and Beyah, supra*, and declined review of that issue.

In the present case, the appellants contend that if the issue in this matter is not corrected, a Senior Correction Officer may face disciplinary action and potentially be removed from employment. For example, Latham was not afforded his full complement of sick days upon his return to employment following his Workers' Compensation leave. As such, when he became sick, he did not have sufficient days to cover his absence. He also did not have leave available under the federal Family and Medical Leave Act (FMLA) since his FMLA time was "charged" to his Workers Compensation leave. Consequently, Latham received an official written reprimand. Therefore, the appellants request that they be awarded their sick, vacation, and administrative leave days to which they are entitled and be reimbursed for the payments made to the appointing authority for the "so called 'un-earned' leave days." In support of their appeals, the appellants submit certifications explaining their specific circumstance, including the time period of their Workers' Compensation leave and the amounts that they were required to reimburse the appointing authority for the excess vacation and sick days used above their prorated entitlements, which range from approximately \$1,300 to \$3,000 per appellant. It is noted that the appellants do not present a claim regarding lost administrative leave or reimbursement of the same to the appointing authority.

In response, the appointing authority states that it complied with *N.J.A.C.* 4A:6-1.5 and its human resource bulletin in denying the appellants' leave time and requiring them to repay leave taken in excess of prorated and accumulated leave entitlements. However, it indicates that it will defer to the Commission as to the proration of leave time in circumstances where employees have been injured at work and are receiving Workers' Compensation benefits. It notes that it has been complying with the Commission's decision in *Jardine and Beyah, supra*, in regard to yearly leave allotments.

## CONCLUSION

*N.J.A.C.* 4A:6-1.2 provides in relevant part that:

- (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. See (c) below for definition of continuous service.

\* \* \*

3. An increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met.

- i. When there is a change in the calendar year in which the years of service requirement is met, due to an employee's leave without pay, the employee shall be liable for any increased vacation leave that was not earned.

\* \* \*

- (c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction, or, if the requirements of *N.J.A.C.* 4A:4-7.1A are met, employment for different jurisdictions . . . without actual interruption due to resignation, retirement or removal.

\* \* \*

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, furlough extension leave and voluntary furlough, shall not be included in calculating years of continuous service.

\* \* \*

- (i) An employee who exhausts all paid vacation leave in any one year shall not be credited with additional paid vacation leave until the beginning of the next calendar year. See *N.J.A.C.* 4A:6-1.5(b)2 for State service.

N.J.A.C. 4A:6-1.3 provides in relevant part that:

- (a) Full-time State employees shall be entitled to annual paid sick leave as set forth in (a)1 and 2 . . . .

\* \* \*

2. After the initial month of employment and up to the end of the first calendar year, employees shall be credited with one working day for each month of service. Thereafter, at the beginning of each calendar year in anticipation of continued employment, employees shall be credited with 15 working days.

\* \* \*

- (c) Paid sick days shall not accrue during a leave of absence without pay or suspension but shall continue to accrue during a voluntary furlough or furlough extension leave.

\* \* \*

- (e) An employee who exhausts all paid sick days in any one year shall not be credited with additional paid sick leave until the beginning of the next calendar year.

N.J.A.C. 4A:6-1.9 provides in relevant part that:

- (a) Full-time State employees in the career and senior executive service . . . . shall be granted three days of administrative leave in each calendar year for personal business, including emergencies and religious observances.

\* \* \*

2. Employees hired during the calendar year shall be granted one-half day of administrative leave for each full calendar month of employment up to a maximum of three days' leave for the remainder of the calendar year. Thereafter, administrative leave shall be credited at the beginning of each calendar year.

\* \* \*

- (e) Administrative leave that is not used during the calendar year shall be forfeited. An employee who leaves State service shall not be required to reimburse the State for days already used.

*N.J.A.C.* 4A:6-1.5 provides in relevant part that:

- (a) Employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.
- (b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.
  1. An employee shall reimburse the appointing authority for paid working days used in excess of his or her prorated and accumulated entitlements.
  2. An employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

As set forth in the foregoing regulations, it is clear that vacation, sick, and administrative leave days are credited at the beginning of each calendar year to an employee in the appellants' situation. In that regard, the appellants are career service employees and have served with the State for several years. Moreover, the rules provide that if an employee takes a leave of absence without pay during the calendar year, his or her annual paid vacation, sick, and administrative leave are prorated based on time earned. *See N.J.A.C.* 4A:6-1.5(b). Thus, the issue to be resolved in the instant matter is whether leave for a job-related injury under the Workers' Compensation statute should be considered a leave without pay for purposes of prorating leave entitlements.

There is no dispute that when the appellants were on leave due to a work-related injury, they were not being paid a salary through their agency. Rather, they received Workers' Compensation benefits. As previously found by the Commission, an employee who receives Workers' Compensation benefits "With Pension" remains an employee in "active service" with the agency, but for payroll accounting, they are considered in "non-pay status." *See Jardine and Beyah, supra, citing James v.*

*Board of Trustees of Public Employees' Retirement System*, 164 N.J. 396 (2000) and *Darryl Beecham v. New Jersey Department of Transportation*, Docket No. A-2446-03T1 (App. Div. November 5, 2004). The appellants argue that "non-pay status" should not equate to unpaid leave or leave without pay to deny them leave entitlements. However, there is no pertinent distinction in these terms in the context of the appellants' situation.<sup>1</sup> In either case, the appellants remain employees of the DOC, and they were not receiving their pay from the DOC. Hence, they were on an authorized leave of absence without pay. Further, it is emphasized that vacation, sick, and administrative leave are given in the beginning of the calendar year in anticipation of continued employment. Although the appellants' employment did not cease, they were not at work to have earned the time. The only exception to the requirement of actual service is during a voluntary furlough or furlough extension leave. See *N.J.A.C.* 4A:6-1.3(c) and *N.J.A.C.* 4A:6-1.5(b). It is noted that while employees who are on leave and receiving Workers' Compensation "With Pension" benefits are considered to have continuous service for purposes of establishing yearly entitlement for vacation leave days, there is no regulatory provision, like furlough, to provide accrual while on Workers' Compensation leave. If such an exception were intended, the regulations would have specified it as such in *N.J.A.C.* 4A:6-1.5(b).

Therefore, based on Civil Service rules, the action of the appointing authority in prorating the appellants' leave time was appropriate. In addition, pursuant to *N.J.A.C.* 4A:6-1.5(b)1 and 2, respectively, the appellants were required to reimburse the appointing authority for paid working days in excess of their prorated and accumulated entitlements of vacation and sick leave and were not entitled to be credited paid vacation or sick leave until the amount of leave used in excess of their entitlement was reimbursed. Accordingly, the action of the appointing authority was also proper in that regard. With respect to administrative leave, although this type of leave should also be prorated if an employee is placed on a leave of absence without pay, the rules do not provide for reimbursement of unearned time used. This is evident in *N.J.A.C.* 4A:6-1.9(e), which provides that an employee who leaves State service shall not be required to reimburse the State for days already used. However, while the appellants request reimbursement of administrative leave, in addition to vacation and sick leave, they have not demonstrated, through their certification or otherwise, that they actually were required to pay back used administrative leave. Thus, the appellants' request cannot be granted. Accordingly, there has not been a misapplication of Civil Service rules with regard to the proration and reimbursement of paid leave days. Therefore, the appellants' appeals must be denied.

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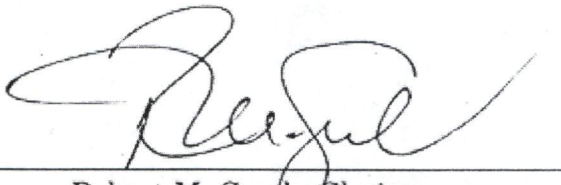
<sup>1</sup> "Non-pay status" is broader and may encompass authorized and unauthorized leaves. Employees, who receive Workers' Compensation benefits, are considered to be on authorized leaves.

**ORDER**

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 16<sup>TH</sup> DAY OF AUGUST, 2017



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Robert M. Czech, Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Richard J. Latham (2016-3614)  
Brian W. Hartem (2016-3615)  
Frank Grillo (2016-3616)  
Thomas M. Jardine (2016-3617)  
Adam Veltre (2016-3618)  
Colin M. Lynch, Esq.  
Tamara L. Rudow  
Kelly Glenn  
Records Center