



STATE OF NEW JERSEY

In the Matter of Tiffany Yacullo,
Judiciary, Vicinage 5-Essex County

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

CSC Docket No. 2022-1656

Request for Waiver of Repayment of
Salary Overpayment

ISSUED: December 21, 2022 (HS)

Tiffany Yacullo, a former Law Clerk with the Judiciary, Vicinage 5-Essex County (Judiciary), 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.

As background, the appellant served a term as a Law Clerk from August 25, 2020 through August 31, 2021 at a salary of \$50,604.56. On September 3, 2021, the appellant began employment as an Assistant Prosecutor with Essex County at a salary of \$62,069. The Judiciary advised her in a November 4, 2021 letter that upon her separation, she should have been paid for a total of 14 hours at a gross pay rate of \$27.70 per hour for two paydays, August 30 and 31, 2021, but was erroneously overpaid a total of 56 hours. She owed \$1,414.98 after deductions and was directed to remit full payment within 30 days.

On appeal to the Commission, the appellant contends that she meets the three factors for a waiver of repayment of a salary overpayment. First, she argues that she was reasonably unaware of the error until it was brought to her attention by the November 4, 2021 letter. She had begun her new position as an Assistant Prosecutor with Essex County when her last Judiciary timesheet was to be submitted. The appellant explains that she advised her former supervisor to create and approve her timesheet for only the two paydays, August 30 and 31, 2021, then did not think much of it again. Specifically, in a September 7, 2021 message to her former supervisor,

the appellant wrote, “[O]ne last question about my clerkship. I know I was still on payroll for August 30th and 31st...how will I get paid for those two day[s]? Do I have to submit a time sheet next week or will you do that?” In a September 9, 2021 message to her former supervisor, the appellant wrote, in part, “I already put in the 30th and 31st as vacation time which you approved so I don’t know if I have to submit a timesheet for the PTO tomorrow. If I do, can you please submit it for me?” The Judiciary, according to the appellant, had previously advised that her last paycheck would be sent via mail. Thus, the appellant maintains, she thought nothing of it when she received her last direct deposit on September 17, 2021¹ and honestly thought it was pay from the Essex County Prosecutor’s Office. Second, the appellant represents that the Human Resources Office admitted that the overpayment resulted from an administrative error on its part. Third, the appellant asserts that repayment, whether in full at once or on a schedule, would result in an economic hardship. She notes that her salary assists in paying bills for rent, utilities, insurance, groceries, cell phone, credit cards, gas, tolls, and student loan. The appellant also financially helps her parents, who are disabled and live on Social Security, and supports her two younger brothers. Any repayment, the appellant maintains, would force her to choose between taking care of her family or taking care of a Judiciary-created error of which she is collateral damage. She states that her family’s survival depends on all their wages collectively, and any wage decrease under current economic conditions, including the uptick in inflation, would place them at a disadvantage. The appellant also alleges that the amount she is being asked to repay is more than her last paycheck amount and that another former Law Clerk was also overpaid but has not been required to make a repayment. In support, the appellant submits a copy of the messages she sent to her supervisor; a copy of her bank statement covering the period September 11, 2021 to October 10, 2021; and documentation detailing her current pay and expenses, including rent, cable, cell phone, tolls, gas, utilities, student loan, credit cards, and groceries.²

In response, the Judiciary, represented by Susanna J. Morris, Esq., presents the certified statement of Kim Tuttle-Alexander, Administrative Specialist 3 Confidential, who notes, among other things, the following:

- In 2021, the clerkships for the Law Clerks ended on August 31, 2021.
- The Law Clerks were entitled to receive payment for August 30 and 31, 2021 (14 hours).

¹ The description of the direct deposit on the appellant’s bank statement covering the period September 11, 2021 to October 10, 2021 includes the following notation: “ACH DEPOSIT, STATE OF N.J. DEPOSIT.”

² Included within this documentation are bank statements covering the periods December 11, 2021 to January 10, 2022 and January 11, 2022 to February 10, 2022. These statements appear heavily redacted.

- Due to a glitch that occurred in the electronic Cost Accounting and Timesheet System, 11 Law Clerks received payment for 10 days (70 hours).
- On September 17, 2021, the appellant received a paycheck in the amount of \$1,938.97, which represented payment for 70 hours.
- The repayment amount owed by the appellant was derived using the formula provided by Centralized Payroll.
- On November 4, 2021, each of the Law Clerks who received the overpayment was sent a letter advising that the overpayment had occurred and that they were obligated to make a repayment.
- The appellant advised that she was experiencing financial hardship. In an effort to accommodate those concerns, the Judiciary agreed to extend the time to pay back the \$1,414.98 to April 2022.
- Of the 11 Law Clerks who received overpayments, three have fully reimbursed the State.

The Judiciary argues that due to the amount of the overpayment, \$1,414.98, it was or should have been readily apparent to the appellant that she was receiving monies she was not entitled to receive. It notes that the Judiciary's Salary Overpayment Recovery Policy (Overpayment Policy) makes clear that it is the responsibility of every employee to know the "amount of salary and vacation to which they are entitled and discuss any questions that they have in that regard with the local Human Resources Office." The Judiciary notes that the appellant worked two days during her last week of employment and was paid for ten. When she received her final paycheck, according to the Judiciary, she was or should have been immediately alerted to the fact that she had received an overpayment, and she should have contacted the Vicinage Human Resources Office to address the issue. But, the Judiciary maintains, she did not do so and instead incorrectly received a significant overpayment.

It is noted that the appellant did not reply to the Judiciary's response.

CONCLUSION

N.J.A.C. 4A:3-4.21 provides, in pertinent part:

- (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.

The appellant requests a waiver of the salary overpayment since she claims that the circumstances of the overpayment were such that she was unaware of the overpayment and repayment would result in economic hardship to her. Moreover, the record reflects that the overpayment was the result of an administrative error. Although the record clearly shows that an administrative error resulted in the salary overpayment, the appellant cannot benefit from the error, as she was not entitled to the higher compensation, unless she can satisfy the other conditions presented above. *See e.g., Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998) (No vested or other rights are accorded by an administrative error).

In that regard, the Commission is unable to make a determination on the economic hardship factor. As the appellant included documentation on appeal that appears heavily redacted, she has not presented a complete picture of her economic situation. But even assuming, *arguendo*, that repayment poses an economic hardship to the appellant, the Commission is not persuaded that it was reasonable for the appellant to be unaware of the error. The Overpayment Policy charged the appellant with knowing the amount of salary and vacation to which she was entitled. The appellant's appeal reveals an understanding that her last timesheet was to cover only two paydays. Her messages from September 7 and 9, 2022 clearly demonstrate that she was anticipating payment for two paydays. However, the appellant actually received payment for 10 paydays. There is a significant difference between receiving payment for 10 days as opposed to only two days, a difference of which the appellant reasonably should have been aware especially since, again, she knew she was only entitled to two days' pay in her final paycheck.

The Commission cannot credit the appellant's claim that she mistook payment from the Judiciary for payment from Essex County. One of the documents the appellant offers in support of her appeal is her bank statement covering the period September 11, 2021 to October 10, 2021, which includes an electronic deposit dated September 17, 2021. The description of this deposit includes the notation, "ACH DEPOSIT, STATE OF N.J. DEPOSIT." It is difficult to see how a deposit that includes "*STATE OF N.J.*" (emphasis added) in its description could be mistaken for pay from Essex County. The Judiciary, after all, is a branch of *State* government. Similarly, the Commission cannot accept the appellant's asserted defense that she had been advised that her last paycheck would be sent via mail. Even assuming the Judiciary deviated from previous advice, the amount of the overpayment should still have alerted the appellant to the error, regardless of the channel of payment. Thus, since the appellant cannot satisfy all three factors in *N.J.A.C. 4A:3-4.21*, she is not eligible for a waiver of the repayment obligation. The parties are, however, encouraged to set a reasonable and, if necessary, lenient repayment schedule.

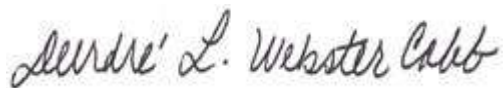
As a final matter, it is noted that the appellant's appeal included allegations that the amount she is being asked to repay is more than her last paycheck amount and that another former Law Clerk was also overpaid but has not been required to make a repayment. In light of the Judiciary's un rebutted response, which clarified the amount she actually received and indicated that each Law Clerk who received an overpayment was advised of the obligation to make a repayment, it is not necessary to further address these allegations.

ORDER

Therefore, it is ordered that this request be denied.

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 21st DAY OF DECEMBER, 2022



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