



**STATE OF NEW JERSEY**

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

In the Matter of Nicole Melvins,  
Camden County

Request for Back Pay

CSC Docket No. 2024-1087

**ISSUED:** August 14, 2024 (EG)

Camden County (County), represented by Antonietta Paiva Rinaldi, Esq., request that the Civil Service Commission (Commission) review the amount of back pay due to Nicole Melvins.

By way of background, Melvins was indefinitely suspended from her position as a Juvenile Detention Officer with the County effective December 24, 2019. Specifically, it was alleged that Melvins spat on a juvenile resident. The matter was referred to the County Prosecutor’s Office and criminal charges were filed. The criminal case was heard on June 20, 2023, and Melvins was found not guilty. She was reinstated to work on July 1, 2023.

In its request, the County asserts that it has provided Melvins with all the salary and benefit information for her separation period and she was credited for all her vacation, sick leave and personal time owed. However, the County is unable to determine the back pay award as Melvins did not supply it with her affidavit certifying to the income she received during her separation. It indicates that that it requested the information several times before filing this request with the Commission to compel her to provide the necessary information. The County provides that the total amount she would have earned during the period of her suspension without a shift differential was \$251,608.77, which was subject to all the regular pension and social security contribution and payroll taxes. The total amount Melvins would have earned with all adjustments (shift differential and 15 minutes of early

reporting time per shift) was \$272,886.65, subject to the same deductions as the calculation without differential. With regard to vacation time, it credited her 18 days of vacation time carryover for 2022 and nine days for 2023. Further, it credited her with her accrued sick time in accordance with the collective bargaining agreement terms. Finally, it indicated that Melvins would be entitled to any additional money she expended on health insurance coverage beyond what she would have paid to maintain coverage through the County during the period of her suspension. She would need to submit documentation of her out-of-pocket health insurance premiums incurred during her separation.

In response, Melvins, represented by William B. Hildebrand, Esq., asserts that at the time of suspension she was receiving a 5.5% shift differential plus 15 minutes of early reporting time per shift. She claims that per the County's September 15, 2023, letter to her, she would have been receiving a gross salary with all adjustments of \$272,886.65. Additionally, she argues that while working for the County she maintained part-time jobs in addition to her regular full-time employment. She asserts that this practice, aside from a brief period of unemployment in 2020, continued during her separation. As such, she argues that her part-time earnings from her job with Daner Realty Company in 2020, 2021 and 2022, per Civil Service rules, should not be included as mitigation since that job was, in essence, a continuation of the part-time employment she had prior to her separation.<sup>1</sup> In this regard, she argues that Civil Service rules indicate that if the employee held other part-time employment, back pay will not be reduced by earnings from such employment, unless the employee increased their hours in this employment following their suspension. In this regard, she contends that it should not matter if the part-time employer changes as long as the part-time hours remain the same. Melvins also argues that if overtime pay is excluded in the salary calculations for her lost salary it should also be excluded from her mitigated amount earned. She contends that fundamental fairness would require overtime to be omitted from mitigated pay if it is omitted from her lost salary. Thus, Melvins maintains that earnings from her part-time position and any overtime income should be removed from her mitigated salary earned which would make her mitigated amount earned \$131,883.10.

Melvins also states that from 2020 to 2023, she paid \$6,665.10 in health insurance coverage and \$442.62 for dental insurance. Furthermore, Melvins argues that she was entitled to 12 vacation days, 10 sick days and four personal leave days per each year for her separation.

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<sup>1</sup> The record shows that in 2019, while employed with the County, Melvins also worked part-time for Youth Consultation Services and earned \$11,535.00. In a submission made to the County in August 2023, Melvins indicated that in 2019, she "worked full-time for the County and part-time for Youth Consultation Services . . . In 2020, following a brief period of unemployment, she worked full-time for Broadstep Academy and part-time for Daner Realty Company."

In reply, the County contends that Civil Service rules recognize that when an employee is already working another job while employed by an appointing authority, the continued employment under the same terms at that other job does not serve to replace lost wages. It asserts that this line of reasoning is reinforced by the next clause in the rules which indicates that income from additional hours is considered mitigating income. The County argues that Melvins' interpretation that this provision serves to shield all part-time employment from the calculation of mitigating income, whether held at the time of separation or not, is overly broad. Further, it contends that Melvins has not provided evidence that she held other employment at the time of separation.

Additionally, the County maintains that Melvins' argument that if overtime pay is excluded in the salary calculations for her lost salary it should also be excluded from her mitigated amount earned is a nonsensical reading of the law which clearly delineates between back pay calculations and mitigation calculations. Moreover, it asserts that courts have consistently ruled that mitigating income includes any and all monies received during the period at issue. Finally, it argues that Melvins is not due any health insurance reimbursement as she paid less for health insurance while suspended from her position than she would have paid while employed with the County.

The following table includes Melvins' income from 2019 to 2023 from all sources submitted in this matter.

<u>EMPLOYER</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>TOTAL</u>
Broadstep Academy	\$32,031.46	\$48,606.34	\$200.00		
Daner Reality	\$12,800.00	\$19,328.00	\$19,390.00		
Unemployment	\$7,504.00				
Kelsch Associates Inc.		\$677.13			
Cooper Health System			\$36,856.62	\$24,647.22	
<b>Total</b>	<b>\$52,335.46</b>	<b>\$68,611.47</b>	<b>\$56,446.62</b>	<b>\$24,647.22</b>	<b>\$202,040.77</b>
<b>Total without part-time</b>	<b>\$39,535.46</b>	<b>\$49,283.47</b>	<b>\$37,056.62</b>	<b>\$24,647.22</b>	<b>\$150,522.77</b>

## CONCLUSION

*N.J.A.C.* 4A:2-2.10(d)3 provides that where a removal or suspension has been reversed or modified, or an indefinite suspension pending the disposition of criminal charges has been reversed, the award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits. Additionally, *N.J.A.C.* 4A:2-2.10(d)1 states that back pay shall not include items such as overtime pay, holiday premium pay and retroactive clothing, uniform or equipment allowances for periods in which the

employee is not working. Further, *N.J.A.C.* 4A:2-2.10(d)7 states that earnings from other employment **held at the time of the adverse action** shall not be deducted unless the employee increased his or her hours at that employment during the period of separation.

In this matter, Melvins argues that her overtime wages should not be used to reduce her back pay award. However, there is no basis under *N.J.A.C.* 4A:2-2.10(d)3 or any other Civil Service law or rules to support her position. In this regard, the purpose of a back pay award is to make an employee whole, not to provide a windfall. See *In the Matter of Quan Johnson* (CSC, decided August 23, 2023). Thus, is there is no basis to exclude Melvins overtime earnings for her mitigated back pay.

Additionally, Melvins notes that rules indicate that if the employee held other employment at the time of separation, back pay will not be reduced by earnings from such employment, unless the employee increased their hours in this employment following their suspension. She contends, therefore, that it should not matter if her part-time employer changed as long as the part-time hours remain the same. The County asserts that Melvins' interpretation that this provision serves to shield all part-time employment from the calculation of mitigating income, whether held at the time of separation or not, is overly broad. The Commission does not agree. Pursuant to *In the Matter of James Flagg vs. City of Newark*, Docket No. A-0788-05T5 (App. Div. July 15, 2008) the secondary job (whether full or part-time) does not need to remain the same job that was held during employment at the primary job. Income from such **continued** secondary employment is only included in mitigation amounts where it is established that the new secondary employment has duties or hours that are incompatible with the employee's original position. As no such evidence has been provided regarding Melvins position with Daner Realty Company, her earnings there would **normally** properly be excluded from her mitigation amount. However, the facts of this matter do not permit the above. In this case, the record indicates that while employed by the County in 2019, Melvins also worked part-time for Youth Consultation Services. While unclear when she left that position, as there is no evidence of income from that source in 2020, her separation from that position had to be sometime in 2019. As her separation with the County occurred on December 24, 2019, it is not certain that she was still working for Youth Consultation Services at that time. If she left that position **before** her separation with the County, neither *N.J.A.C.* 4A:2-2.10(d)7, nor the above *Flagg* analysis would apply. Regardless, assuming, *arguendo*, she was still with Youth Consultation Services at the time, by her own admission, after leaving that job, she had a "brief period of unemployment" in 2020. Given this fact, **no subsequent jobs she obtained**, whether full or part-time, could be considered a continuation of her second part-time job with Youth Consultation Services while she was employed with the County. As such, the analysis under *Flagg*, above, is inapplicable. Rather, any jobs she obtained after being **completely unemployed**, would be considered as mitigatable income.

The County provides that the total amount Melvins would have earned during the period of her suspension with shift differential and all other adjustments was \$272,886.65.<sup>2</sup> Accordingly, the amount of gross back pay due Melvins is (\$272,886.65 - \$202,040.77) \$70,845.88.

Melvins also states that from 2020 to 2023 she paid \$6,665.10 in health insurance coverage and \$442.62 for dental insurance and should be reimbursed for these amounts. The County argues that Melvins is not due any health insurance reimbursement as she paid less for health insurance while suspended from her position than she would have paid while employed with the County. *N.J.A.C. 4A:2-2.10(d)* provides that benefits shall include additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal. There is no indication that the amount of health insurance paid can be reduced or eliminated if the cost of health insurance from the primary employer would have cost more than what was spent. Therefore, Melvins is entitled to \$6,665.10 for money spent to keep her health insurance coverage as well as the \$442.62 for dental insurance. See *In the Matter of Vito Cammisa* (MSB, decided September 20, 2006) (Employee entitled to reimbursement for amounts spent to maintain medical insurance which includes health, dental and prescription insurance coverage).

With regard to sick leave, Melvins is entitled to all sick leave accrued during the period of separation, as sick leave can accumulate from year to year without limit. See *N.J.S.A. 11A:6-5* and *N.J.A.C. 4A:6-1.3(f)*; See also, *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). There is no indication that the County did not credit Melvins with the proper amount of sick time. As to vacation leave, Melvins was not due any vacation leave for 2020 and 2021 since vacation leave not taken in a given year can only be carried over to the following year. See *N.J.S.A. 11A:6-3(e)* and *N.J.A.C. 4A:6-1.2(f)*; See also, *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). Melvins was entitled to her 2022 vacation leave as well as pro-rated amount for 2023 when she returned to work on July 1, 2023. The County has indicated that it provided Melvins with this time and no evidence has been presented to contradict the County's assertions. Further, Civil Service regulations do not provide an entitlement for personal days.

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<sup>2</sup> Shift differential is properly included as part of back pay wages where, as here, the record indicates the employee was entitled to such differential while employed. See *In the Matter of Odise Carr* (CSC, decided December 5, 2012) (Unfair to deny employee shift differential as part of regular wages where employee was entitled to same when working).

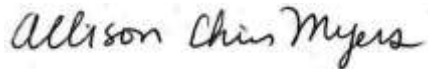
**ORDER**

Therefore, it is ordered that the appointing authority pay Nicole Melvins \$70,848.88 in gross back pay within 30 days of issuance of this decision.

It is further ordered that the appointing authority reimburse Melvins for health and dental insurance costs in the amount of \$7,107.72 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 14<sup>TH</sup> DAY OF AUGUST, 2024



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