



**STATE OF NEW JERSEY**

In the Matter of Frank James, Essex  
County, Department of Corrections

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

CSC Docket No. 2024-415

Request for Back Pay

**ISSUED: April 10, 2024 (HS)**

Frank James, a County Correctional Police Officer with Essex County, Department of Corrections, represented by Patrick P. Toscano, Jr., Esq., requests back pay in accordance with the Civil Service Commission (Commission) decision rendered on June 15, 2022.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action removing the petitioner, effective March 9, 2020, on charges of incompetency, inefficiency, or failure to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause. Upon his appeal, the matter was transmitted to the Office of Administrative Law for a hearing. Following a hearing and the Commission’s *de novo* review, the petitioner’s removal was reversed, and the Commission ordered that the petitioner be reinstated and awarded reasonable counsel fees and mitigated back pay, benefits, and seniority from his separation from employment to the actual date of reinstatement. *See In the Matter of Frank James, Essex County, Department of Corrections* (CSC, decided June 15, 2022). The record reflects that the petitioner was reinstated on July 28, 2022. Thus, the back pay period was March 9, 2020 through July 27, 2022.

In his request, dated August 10, 2023, the petitioner indicates that the appointing authority already awarded him \$198,617.00 in back pay on November 10, 2022. However, he maintains that the figure is inaccurate because it did not account for pay step increases that the appellant should have received on September 1, 2018 and September 1, 2022, respectively. In addition, the appellant complains that his

November 10, 2022 payment was “shockingly” taxed at a 57% rate due to a lump sum payment and contends that had that payment been made “normally,” he would have saved approximately \$70,000.00 in taxes. Further, the appellant maintains that the appointing authority has refused to take his pension payments from his bi-weekly salary since his reinstatement. The appellant also seeks counsel fees for the instant request.

Despite opportunities to do so, the appointing authority did not submit any information in this matter.

## CONCLUSION

The petitioner claims that he should have received pay step increases on September 1, 2018 and September 1, 2022, respectively. However, the instant request was not filed until August 2023, almost five years after the first of those dates and almost a year after the second. Thus, these issues have not been timely raised. *See N.J.A.C. 4A:2-1.1(b)*. But even if they were, the Commission would not have jurisdiction over them. Although the appellant couches his claims in terms of back pay, whether he was entitled to receive a pay step increase on a particular date is in fact a dispute over salary. Salary disputes in local service are not reviewable by the Commission unless the salary of the employee is outside the established range for the job title. In this regard, *N.J.S.A. 11A:3-7d* and *N.J.A.C. 4A:3-4.1(a)2* provide that when a salary range is established for a job title, an employee shall not be paid a base salary below the minimum or above the maximum established for that range. The instant matter does not implicate such issues. Moreover, the Commission has no jurisdiction to award damages for the adverse tax consequences of the petitioner’s receipt of back pay in a lump sum. *See N.J.A.C. 4A:2-1.5*. Finally, the Commission also lacks jurisdiction to order the appointing authority to withhold pension payments from the appellant’s salary since reinstatement.<sup>1</sup> Given the foregoing, there is no sufficient cause to award counsel fees in this matter. *See id.*

## 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.

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<sup>1</sup> The appellant may wish to consult the New Jersey Department of the Treasury, Division of Pensions and Benefits.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 10<sup>TH</sup> DAY OF APRIL, 2024

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

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