



STATE OF NEW JERSEY

In the Matter of Vincent Antenucci,
Division of State Police, Department
of Law and Public Safety

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

CSC Docket No. 2024-2589

Request for Waiver of Repayment of
Salary Overpayment

ISSUED: July 24, 2024 (HS)

Vincent Antenucci, a Sergeant, Field Operations with the Division of State Police, Department of Law and Public Safety, represented by Michael A. Bukosky, Esq., 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 was placed on the wrong salary step, step eight instead of step six, when he was appointed to the title of Trooper 2, effective August 11, 2012, and received three subsequent promotions. The error compounded over the ensuing years, resulting in a salary overpayment of approximately \$29,000 of which the appellant was advised in May 2019. The appellant then sought a waiver of repayment of the erroneous salary overpayment before the Commission. Although the record clearly showed that an administrative error resulted in the salary overpayment, the appellant could not benefit from the error, as he was not entitled to the higher compensation, unless he could satisfy the other conditions for a waiver. The Commission determined that he could not satisfy those conditions. At the time of his appointment to Trooper 2, the appellant's salary had increased by nearly \$10,000 when it should only have increased by less than \$4,000. Given the amount of the erroneous salary increase, which was well above that contemplated by the appellant's collective negotiations agreement (CNA) then in effect, the Commission could not accept that it was reasonable for the appellant to be unaware and not question the increase he received, especially since he acknowledged that he knew the

promotion was coming. The State compensation plan was public information, and there were important resources, including his own CNA and the Compensation Compendium, that the appellant could and should have consulted and that would have revealed the error. Further, the appellant had been promoted to the title of Sergeant, Field Operations, effective February 16, 2019, at a salary of \$102,321.38. His monthly budget included expenses for at least two items, cable television and entertainment, that appeared to be non-essential. Additionally, the appointing authority had not set any repayment schedule. Consequently, it could not be demonstrated that, given the appellant's level of (then) current compensation, the amount he would be required to pay per bi-weekly pay period would create an economic hardship to him. Therefore, based on the foregoing, the Commission denied the waiver request and encouraged the appointing authority and appellant to set "a reasonable and, if necessary, lenient repayment schedule" for him to repay the \$29,000. *See In the Matter of Vincent Antenucci* (CSC, decided December 18, 2019).

The Superior Court, Appellate Division, affirmed the Commission's 2019 decision finding that it was not arbitrary, capricious, or unreasonable. Concerning the appellant's claimed economic hardship, the court stated:

The Commission determined [the appellant] failed to demonstrate economic hardship because the [appointing authority] had not set a repayment schedule. Because no repayment schedule had been established, [the appellant] failed to satisfy his burden of showing an inability to repay his salary overpayment for entitlement to a waiver. Further, the Commission concluded certain monthly expenses incurred by [the appellant] and his family were non-essential and therefore repayment would not result in economic hardship because [the appellant] could adjust his monthly expenses when a repayment schedule is established.

See In the Matter of Vincent Antenucci, Docket No. A-2165-19 (App. Div. October 27, 2021). The Appellate Division's opinion though indicated that following the issuance of the Commission's decision, the State Trooper Non-Commissioned Officers Association (Association) became involved in the matter. The Association filed a grievance on the appellant's behalf with the Public Employment Relations Commission (PERC) against the appointing authority, and a hearing before a PERC-appointed arbitrator was scheduled. The Appellate Division stated that the Association's newly raised arguments on appeal would be adjudicated by the arbitrator, including the disputed salary overpayment. The Appellate Division further noted that the arbitrator's adjudication of the Association's grievance "[did] not bar [the appellant]'s filing a new waiver application pending [the arbitrator]'s determination on the issue of any salary overpayment."

Following the resolution of discovery disputes, hearings were held before the aforementioned arbitrator on September 21, 2022, July 6, 2023, October 26, 2023, and November 2, 2023. The Association and appointing authority were each represented by counsel, and multiple witnesses and exhibits were presented. The arbitrator rendered a single-spaced 21-page decision and award on May 21, 2024. Among his findings were the following:

- The Association and appellant did not dispute his employment history, history of promotions, salary history, and overpayment as set forth in the Compensation Compendium, CNA, and Personnel Management Information System.
- The Association did not meet its burden to prove that the appellant was not mistakenly overpaid.
- Based on the testimony in the record, it was not unreasonable for the appellant to not have noticed the mistaken salary overpayment.
- The evidence demonstrated that the CNA, Compensation Compendium, and Trooper salary guide, ranges, and steps are inputted manually, are not foolproof, and unfortunately mistakes are made in the application of the guide to a particular Trooper's salary.
- The appointing authority did not waive its rights by merely seeking to correct an inadvertent mistake in the appellant's salary calculations to which he was unjustly enriched thereby necessitating the recoupment.
- To date, no salary repayment plan had been agreed to and no salary deductions had been made toward such a repayment plan.
- While the appointing authority sought a lenient repayment plan that would not cause the appellant undue hardship, it did not negotiate the repayment plan, in part, due to the Association and appellant's pursuit of the arbitration.
- PERC has held that in cases of overpayment, the appointing authority still has an obligation to negotiate.

In closing, the arbitrator directed the parties to negotiate "a reasonable and, if necessary, lenient repayment schedule" as ordered by the Commission and affirmed by the Appellate Division.

Taking his cue from the Appellate Division's indication that the arbitrator's decision would "not bar [the appellant]'s filing a new waiver application pending [the arbitrator]'s determination on the issue of any salary overpayment," the appellant filed the instant request for a waiver of repayment of a salary overpayment, his second before the Commission concerning the same overpayment issue. In the instant request, the appellant directs the Commission to a copy of his Post Hearing Brief submitted to the arbitrator, where he argued that the documentary and evidentiary trail concerning the alleged overpayments in this case was "foggy" at best

and insufficient to support a claim of an actual overpayment and that this case is like *In re Stumpf*, Docket No. A-0053-15T1 (App. Div. July 17, 2017). Regarding *Stumpf*, the appellant argues that the amount at issue there, \$42,000, is “analogously similar” to the \$29,000 presented in this case. He contends that the Appellate Division “held definitively” that such sums rise to the level of a “facially apparent hardship” and that “requiring petitioner to repay \$42,000 would result in an economic hardship” as a matter of law and equity. He asks that the Commission “reconsider” its prior decision in a *de novo* capacity.

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 Appellate Division affirmed the Commissioner of Personnel’s decision to deny a request for waiver of repayment of salary overpayment, finding that, although the employee 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.

At the outset, the Commission declines to address anew the underlying issue as to whether the appellant was erroneously overpaid in the first place. The overpayment has by now been extensively litigated in multiple fora including the Commission already once before; the Appellate Division; and before a PERC-appointed arbitrator. Notably, the arbitrator found that the Association had not met its burden to prove that the appellant was not mistakenly overpaid. Based on this history, it is appropriate to proceed in the instant matter on the understanding that

the appellant was overpaid.¹ It is also clear that the appellant still cannot prevail on the economic hardship prong. In this regard, his base salary has increased to \$118,399.36 from the \$102,321.38 base salary he held at the time of the Commission's last decision over four years ago. Additionally, the parties still have not set any repayment schedule. Consequently, once again, it cannot be demonstrated that, given the appellant's level of current compensation, the amount he would be required to pay per bi-weekly pay period would create a hardship to him.

Stumpf, supra, is not grounds for relief. In this regard, the appellant had already argued the point before the arbitrator, who found that the appointing authority sought a lenient repayment plan that would not cause the appellant undue hardship. Further, the Appellate Division's analysis of the economic hardship prong in *Stumpf* was as follows:

[R]equiring petitioner to repay \$42,000 would result in an economic hardship. The Commission's rationale for finding no economic hardship relied upon petitioner's family expenditures for non-essential items including \$415 for entertainment, \$108 for recreation, and \$28.50 for dues and subscription. These modest non-essential expenditures do not reflect an ability to repay \$42,000 without creating an economic hardship.

Stumpf is distinguishable from the matter at hand. The Commission's rationale for finding no economic hardship here relies on more than mere "modest non-essential expenditures." As in the Commission's 2019 decision affirmed by the Appellate Division, the rationale includes the fact that the appointing authority has not set a repayment schedule. Also differentiating *Stumpf* is the fact that the appellant, through arbitration, has now won a right to have his "reasonable and, if necessary, lenient repayment schedule" negotiated. Additionally, in *Stumpf*, the court focused on the total lump sum amount at issue, but neither the Commission nor the arbitrator is suggesting that the appellant is required to repay his salary overpayment in one lump sum. Further, in *Stumpf's* case, the court's particular determination was that her non-essential expenditures, which the court deemed "modest," did not reflect an ability to repay \$42,000 without creating an economic hardship. The Commission does not view this language as purporting to set a broad rule or otherwise "[hold] definitively" that any particular sum is a "facially apparent hardship."

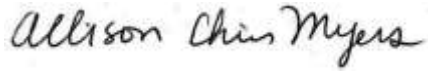
ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the salary overpayment by Vincent Antenucci be denied.

¹ If the appellant is unsatisfied with the arbitrator's decision, he should pursue whatever appropriate legal remedies may exist to challenge such decision. The Commission, for its part, does not have the ability to set aside the decision and award of a PERC-appointed arbitrator.

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 24TH DAY OF JULY, 2024



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