



STATE OF NEW JERSEY

In the Matter of Richard Kurapka,
Greystone Park Psychiatric Hospital,
Department of Health

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

CSC Docket No. 2024-1639

Administrative Appeal

ISSUED: July 24, 2024 (HS)

Richard Kurapka requests relief regarding his salary and vacation leave entitlements.

As background, the appellant was serving permanently in the title of Principal Community Program Specialist with the Division of Developmental Disabilities, Department of Human Services. He then received a regular appointment from an open competitive eligible list to the title of Quality Assurance Coordinator, effective November 6, 2021 with Greystone Park Psychiatric Hospital (GPPH), Department of Health (DOH)¹ at a salary of \$95,593.73 (range R29, step five) and anniversary date of 2/22, pay period two in calendar year 2022 beginning January 1, 2022. At the beginning of pay period 2/22, the appellant received the requisite increment, and his salary increased to \$101,387.03 (range R29, step six) with an anniversary date of 2/23, pay period two in calendar year 2023 beginning December 31, 2022. Prior to that date, however, GPPH released the appellant at the end of his extended working test period, effective May 5, 2022. Upon the appellant's appeal to the Civil Service Commission (Commission), the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. At the OAL, the parties entered into a settlement. The settlement agreement provided for the appellant's reinstatement to employment with the DOH, specifically in a Quality Assurance

¹ As such, the appellant was considered to have resigned from the previous permanent title. See *N.J.A.C. 4A:4-7.9*.

Coordinator position at the Trenton Psychiatric Hospital (TPH). The appellant would:

retain his seniority for [layoff], vacation and sick time purposes dating back to his date of hire, April 29, 2010, when he entered permanent service with the State of New Jersey, with the exception that for the time period of May 6, 2022 to the date of his reinstatement at TPH shall not count towards total seniority for [layoff], vacation and sick time purposes and will be recorded as a leave without pay for personal reasons on the employee's record.

In consideration of releasing any claims against DOH in the matter, DOH agreed to pay to the appellant the sum of \$20,000 in full satisfaction of all of his claims. Additionally: "The terms of [the settlement agreement] represent the entire agreement and understanding between the [p]arties as to the entire subject matter herein." The Administrative Law Judge recommended approval of the settlement, and upon its review, the Commission acknowledged the settlement agreement. Effective April 23, 2023, the appellant was reinstated at a salary of \$103,414.78 (range R29, step six) with an anniversary date of 1/24, pay period one in calendar year 2024 beginning December 16, 2023. At the beginning of pay period 1/24, the appellant received an increment, and his salary increased to \$111,131.87 (range R29, step seven) with an anniversary date of 1/25, pay period one in calendar year 2025 beginning December 14, 2024.

In his appeal to the Commission, postmarked January 29, 2024, the appellant recounts that he became aware that a salary increment he had received was reversed on June 7, 2023 when he noticed his paycheck was reduced. He then learned of a salary overpayment repayment on June 23, 2023 with a further reduced paycheck. The appellant maintains that his anniversary date fell while he was out of work on December 31, 2022, moving him to step seven. Upon his return to work April 24, 2023, he began earning salary at step seven, but his salary was then reduced to step six due to the administration of *N.J.A.C. 4A:3-4.6* and adjustment to his anniversary date. While the appellant concedes this action was "correct in the circumstance of a [personal] leave without pay," he contends that his time out of work was "not that" and the action taken is "not in the spirit of the settlement agreement." Furthermore, GPPH did not follow *N.J.A.C. 4A:3-4.6(c)* in its obligation to "notify . . . the employee in writing that the anniversary date is to be changed." The appellant also alleges that GPPH violated *N.J.A.C. 4A:3-4.21* when they administered the salary overpayment repayment by "not notifying him in writing of the planned repayment." He maintains that he is entitled to a waiver of repayment because he could reasonably have been unaware of the error and repayment would result in economic hardship as he had "just returned to work after losing \$100,000 in salary."

In addition, the appellant recounts that he first learned of a mistaken reduction in his vacation time balance on July 3, 2023 while auditing his leave balances in the electronic Cost Accounting and Timesheet System. The appellant again argues that GPPH administered his return to work as “only a [personal] leave without pay,” which technically would reduce his vacation leave balance in this way, but this is again “not the spirit of the settlement agreement.” He maintains that he should be returned to almost exactly where he left off with respect to leave balance and protests that he should not be penalized in a “use it or lose it ruling” when he was obviously unable to use his time as intended. The appellant adds that with the way the administrative code is written, if his termination had been upheld, he would have received a check for all the time he had in his bank at the time of separation. That would represent more vacation time than he was given upon his return.

The appellant insists that the spirit of the settlement agreement was to “return [him] to work and define [his] time of separation as something other than a termination and subsequent rehire.” To remedy the salary step issue, the appellant requests that he be returned to step seven retroactive to pay period 2/23 and placed on step eight retroactive to pay period 1/24. To remedy the vacation leave issue, the appellant requests that provision be created for him to carry 110 vacation hours earned in 2021² into 2024. The appellant indicates that the best possible outcome is that the Commission corrects these issues administratively, but he is prepared for a hearing as well.

On the issue of the timeliness of his appeal, the appellant acknowledges that his appeal has been filed beyond the timeframe in *N.J.A.C. 4A:2-1.1(b)* but argues that there are extenuating circumstances. Specifically, he states that he attempted to work with GPPH directly and solicited assistance from the DOH Civil Service representative, and that these efforts entailed delays.³

In response, with respect to the salary step issue, GPPH indicates that the appellant was removed from service effective May 6, 2022 but was not removed from the Personnel Management Information System (PMIS) timely and “the permanent date dropped into his history.” GPPH made repeated attempts to try to rectify this error through PMIS support to no avail. PMIS support had to assist and rebuild the history once the settlement offer was accepted and the appellant was to be reinstated to TPH. The appellant erroneously received an anniversary date increase because of the “[permanent] date falling into his history.” He was paid this erroneous amount due to the length of time it took to rebuild the history with PMIS support. The appellant was not actively working and was on a personal reasons leave as per the

² Per the appellant, he earned 140 hours in 2021, of which he used 30 in 2022 (140 – 30 = 110).

³ The appellant requested that his appeal fee be returned if his appeal is eligible for a fee exemption. It is not. As the issues in the appeal include disputes over salary step and vacation leave entitlements, the appeal fee applies. See *N.J.A.C. 4A:2-1.8(a)*.

settlement agreement and therefore would not be entitled to the anniversary date increment in accordance with *N.J.A.C.* 4A:3-4.6(a)1.

With respect to the vacation leave issue, GPPH indicates that the appellant was credited with his earned 2022 time and the balance of the 2023 time. Specifically, he had 51.5 hours earned from 2022 and was credited with 93 hours for 2023 for a total of 144.50 hours of vacation in accordance with *N.J.A.C.* 4A:6-1.5(b). Under *N.J.A.C.* 4A:6-1.2(g) the 110 hours from 2021 could not be carried into 2023, and there was no discussion of this during the settlement process. GPPH states that it did attempt to pay the 2021 time out as the appellant “would have been paid for it had [he] been timely removed” from PMIS. GPPH notes that the request was denied as there was no break in service and no mention of a vacation payout in the settlement.⁴

CONCLUSION

N.J.A.C. 4A:2-1.1(b) states that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.⁵ The appellant was reinstated in April 2023, but the instant appeal was not filed until several months later in January 2024. The appellant asks that any delay in filing be excused as he was attempting to work with GPPH directly and soliciting other assistance. GPPH does not oppose the appellant’s appeal on timeliness grounds. Thus, under these circumstances, the Commission will accept the appeal as filed within a reasonable amount of time and proceed to the merits.

Administrative appeals are treated as reviews of the written record. *See N.J.S.A.* 11A:2-6b. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C.* 4A:2-1.1(d). For the reasons explained below, no material issue of disputed fact has been presented that would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

N.J.A.C. 4A:3-4.5(a) provides that an anniversary date is the biweekly pay period in which an employee is eligible, if warranted by performance and place in the salary range, for a salary increase. *N.J.A.C.* 4A:3-4.6(a) provides that subject to exceptions found in *N.J.A.C.* 4A:3-4.6(b) not relevant to this matter, time spent by employees in non-pay status shall not be included in total time of employment when calculating eligibility for annual increments. *N.J.A.C.* 4A:3-4.6(a)1 provides that an

⁴ GPPH clarified that the Division of Human Resource Information Services (HRIS) was the source of the denial.

⁵ It is noted that pursuant to a rule modification, this timeframe is 60 days so long as the emergency declared pursuant to Executive Order No. 103 (Murphy, March 9, 2020) is in effect. 52 *N.J.R.* 971(a).

employee's anniversary date shall be advanced by one full pay period for each full pay period in non-pay status. *N.J.A.C. 4A:3-4.6(c)* provides, in pertinent part, that when an employee returns from one full pay period or more in non-pay status, the appointing authority shall notify the employee in writing that the anniversary date is to be changed.

N.J.S.A. 11A:6-2f provides, in pertinent part, that vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only. *N.J.A.C. 4A:6-1.2(h)* provides, in pertinent part, that an employee who leaves State government service shall be paid for unused earned vacation leave.

The Commission first addresses the salary step placement issue. The appellant insists that because his anniversary date of 2/23, *i.e.*, pay period two in calendar year 2023 beginning December 31, 2022, fell while he was out of work, he was entitled to begin earning salary at step seven upon his reinstatement to work on April 23, 2023. The Commission is unpersuaded. The 2/23 anniversary date was the appellant's anniversary date prior to his May 5, 2022 release at the end of his working test period. Per the unambiguous terms of the settlement of the appellant's working test period appeal and notwithstanding the appellant's view as to its "spirit," the time period of May 6, 2022 to the date of his reinstatement was "recorded as a *leave without pay for personal reasons* on the [appellant's] record" (emphasis added). Under *N.J.A.C. 4A:3-4.6(a)*, time spent by employees in non-pay status shall not be included in total time of employment when calculating eligibility for annual increments. Since the appellant was in non-pay status for 25 pay periods per the settlement agreement, his anniversary date was properly advanced by 25 pay periods to 1/24, *i.e.*, pay period one in calendar year 2024 beginning December 16, 2023. *See N.J.A.C. 4A:3-4.6(a)1*. Thus, the appellant was only eligible for an increment and placement on step seven on December 16, 2023, *not* April 23, 2023. Further, he will not be eligible for placement on step eight until his anniversary date of 1/25, *i.e.*, pay period one in calendar year 2025 beginning December 14, 2024. While the Commission cautions DOH to adhere to the notice requirement found in *N.J.A.C. 4A:3-4.6(c)* going forward, nothing in that rule creates an entitlement not to have the provisions of *N.J.A.C. 4A:3-4.6(a)* applied against an employee where the notice requirement in *N.J.A.C. 4A:3-4.6(c)* was not observed.

GPPH acknowledges that the appellant erroneously received salary at step seven, but the appellant invokes *N.J.A.C. 4A:3-4.21*, which 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 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.

The appellant effectively requests a waiver of the salary overpayment since he claims that the circumstances of the overpayment were such that he was unaware of the overpayment and repayment would result in economic hardship to him. Assuming an administrative error resulted in the salary overpayment, the appellant cannot benefit from the error, as he was not entitled to the higher compensation, unless he 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 this regard, the appellant claims that the circumstances and amount of the overpayment were such that he could reasonably have been unaware of the error. The Commission is not persuaded. Once again, the appellant's reliance on his view of the "spirit" of his settlement agreement is unavailing. The agreement clearly specifies that the time period from May 6, 2022 to the date of his reinstatement, which ultimately was April 23, 2023, would be recorded as a leave without pay for personal reasons. *N.J.A.C. 4A:3-4.6(a)* and *N.J.A.C. 4A:3-4.6(a)1* clearly note the impact of time spent in non-pay status on the employee's anniversary date. Thus, it was not reasonable for the appellant to expect that his record would reflect receipt of an increment on December 31, 2022 and that he would earn salary at step seven upon reinstatement to employment on April 23, 2023. Further, although the appellant asserts that repayment resulted in economic hardship to him, he was reinstated on

April 23, 2023 at a salary of \$103,414.78, and he offers no information as to his household monthly income and expenses. As such, his thinly argued claim of economic hardship – that he had “just returned to work after losing \$100,000 in salary” – is insufficient to establish economic hardship. Therefore, based on the foregoing, the appellant cannot satisfy all of the factors outlined in *N.J.A.C. 4A:3-4.21* to successfully obtain a waiver of the repayment obligation. Further, while the appellant alleges that GPPH violated *N.J.A.C. 4A:3-4.21* when it administered the salary overpayment repayment by “not notifying him in writing of the planned repayment,” that provision does not purport to regulate the manner in which an appointing authority must notify an employee of a planned repayment of an erroneous salary overpayment.

Turning to the vacation leave issue, the appellant is foreclosed from carrying the 110 hours of vacation leave earned in 2021 into 2024. In this regard, pursuant to *N.J.S.A. 11A:6-2f*, vacation leave not taken in a given year can only be carried over to the following year. See *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). The Commission cannot ignore the clear language of the statute. However, this does not leave the appellant without a remedy altogether. In this regard, the Commission notes that GPPH has acknowledged that the appellant would have been paid for the unused 2021 vacation leave but for the error in not timely removing him from PMIS at the time of his release at the end of his working test period in 2022. See *N.J.A.C. 4A:6-1.2(h)* (employee who *leaves State government service shall* be paid for unused earned vacation leave). GPPH has also acknowledged that it, indeed, sought to pay the time out, which indicates that the parties are in agreement that the appellant remains entitled to at least some relief with respect to the 2021 time. Therefore, as an equitable remedy based on the foregoing unique circumstances, DOH shall pay the appellant for the unused 2021-earned vacation leave.⁶

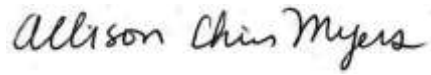
ORDER

Therefore, it is ordered that the Department of Health pay Richard Kurapka for any unused vacation leave he earned in 2021.

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

⁶ In granting this relief, the Commission does not fault HRIS for denying GPPH’s request. The settlement agreement, on its face, indeed does not provide that the appellant had a break in service or that he is to receive a vacation leave payout, so HRIS’s determination was not unreasonable at the time. The remedy being granted here is an equitable one and is provided following the Commission’s opportunity to review the written record, including the submissions of the parties, in this appeal.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF JULY, 2024



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