



STATE OF NEW JERSEY

In the Matter of Christopher Ferro,
Bergen County Sheriff's Office

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

CSC Docket No. 2025-61

Court Remand

ISSUED: September 25, 2024 (SLK)

The Superior Court of New Jersey, Appellate Division, in *In the Matter of Christopher Ferro*, Docket No. A-3160-21T1 (App. Div., July 8, 2024), remanded *In the Matter of Christopher Ferro* (CSC, decided November 2, 2022) to determine whether Christopher Ferro's failure to mitigate his back pay limited or affected his entitlement to vacation and sick leave benefits, and amounts expended to maintain his health insurance coverage, and if so, any amount he should receive.

By way of background, Ferro, a County Correctional Police Officer with the Bergen County Sheriff's Office (BCSO), was suspended on January 7, 2019, for failing a random drug test and subsequently removed. Ferro appealed his removal to the Civil Service Commission (Commission), and the matter was transmitted to the Office of Administrative Law as a contested case. After a hearing, the Administrative Law Judge (ALJ) recommended the removal be reversed. Thereafter, in *In the Matter of Christopher Ferro* (CSC, deemed adopted October 27, 2021), as there was a tie vote among the Commission members, the ALJ's recommendation was adopted, and this agency informed the parties that Ferro was entitled to be reinstated with, among other things, mitigated back pay and reasonable counsel fees. Thereafter, Ferro was reinstated on December 1, 2021. As such, the applicable period for back pay that was subject to mitigation was January 7, 2019, until October 26, 2021, while the period from October 27, 2021, until November 30, 2021, was not subject to mitigation. *See N.J.A.C. 4A:2-2.10(d)*. In *In the Matter of Christopher Ferro* (CSC, decided May 23, 2022), the Commission ordered that Ferro was entitled to back pay for a portion of

2019, but he was not entitled to a back pay award in 2020 and between January 1, 2021, through October 26, 2021, due to his failure to make reasonable efforts to mitigate. Additionally, Ferro was entitled to back pay from October 27, 2021, to November 30, 2021. In *In the Matter of Christopher Ferro* (CSC, decided November 2, 2022), upon further information, the Commission clarified that Ferro was specifically entitled to a back pay award in July, October, November, and December 2019, but he was not entitled to back pay in any other months in 2019. Subsequently, *In the Matter of Christopher Ferro*, Docket No. A-3160-21 (App. Div. July 8, 2024), the Appellate Division affirmed the Commission's decision but remanded it back to the Commission for the limited purpose of determining whether Ferro's failure to mitigate limited or affected his entitlement to vacation and sick leave benefits and amounts expended by him to maintain his health insurance coverage, and if so, any amounts he should receive.

Ferro, represented by David J. Altieri, Esq., states that while the BCSO contends he is not entitled to benefits during the period where he was found to have failed to mitigate the back pay award, *N.J.A.C. 4A:2-2.10(d)* indicates that back pay and benefits are distinguished from each other. Further, *N.J.A.C. 4A:2-2.10(d)4* provides that an employee is not eligible for back pay during any period in which the employee failed to make reasonable efforts to mitigate. Therefore, he argues that a plain reading of the rules indicates that the limit on back pay does not extend to benefits, and he is entitled to vacation, sick leave credits, and amounts expended on health insurance coverage during the improper separation period regardless of his failure to mitigate. Additionally, Ferro highlights that for the months in 2019 where he was awarded back pay, the BCSO also withheld \$6,410.50 for insurance premiums although he did not receive insurance coverage from the BCSO during this time. Moreover, Ferro submits that from October 2019 through December 2021, he paid a total of \$26,464.10 in health insurance premiums through his wife's employment. Further, he argues that there is no basis for the BCSO's position that he is not entitled to sick leave credits for the duration of the improper separation period. Finally, concerning vacation, Ferro asserts that if the Commission accepts the BCSO's "use it or lose it" argument, based upon the date of his reinstatement, he should be entitled to all of his 2021 vacation as he was not afforded that time when he was reinstated in 2021 when he would have had the opportunity to use it, and thus is presently entitled to it.

In response, the BCSO, represented by Brian M. Hak, Esq., argues that Ferro is only entitled to vacation and sick leave benefits during the periods which the Commission awarded back pay as it asserts that any other interpretation does not make any sense. It states that "benefits" are benefits of employment and the two go hand and hand. Therefore, the BCSO asserts that Ferro is only entitled to benefits for July, October, November and December 2019 and the four weeks in November 2021. Further, regarding vacation, the BCSO otherwise states that Ferro is not entitled to vacation accrued between 2019 and 2021 because vacation can only be

carried over one year per Civil Service law and rules. Moreover, it indicates that Ferro is only entitled to sick leave for the periods which the Commission ordered back pay.

Concerning health insurance premium benefits, the BCSO indicates that Ferro is only entitled to reimbursement to maintain his own medical coverage during the separation, and he is not entitled to reimbursement for the cost of other family members. Further, it contends that Ferro is not entitled to be reimbursed for any premiums to maintain his insurance through his wife's health insurance. Moreover, he is not entitled to be reimbursed for out-of-pocket medical expenses. It notes that Ferro chose not to maintain his health insurance under Bergen County's plan, and he elected to be covered through his wife's plan. The BCSO submits prior Commission decisions to support its position.

CONCLUSION

N.J.A.C. 4A:2-2.10(d) provides that back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

N.J.A.C. 4A:2-2.10(d)4 provides that where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed, and the employee has been unemployed or underemployed for all or a part of the separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

N.J.S.A. 11A:6-3(e) and *N.J.A.C.* 4A:6-1.2(g) provide that appointing authorities may establish procedures for scheduling of vacation leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave.

N.J.S.A. 11A:6-5 and *N.J.A.C.* 4A:6-1.3(f) provide that unused sick leave shall accumulate from year to year without limit.

In this matter, a plain language review of *N.J.A.C.* 4A:2-2.10(d) indicates that back pay and benefits are distinguished from each other. Further, *N.J.A.C.* 4A:2-2.10(d)4 provides that an employee is not eligible for **back pay** during any period in which the employee failed to make reasonable efforts to mitigate. Taken together, these rules impose the duty to mitigate back pay only. Had the Commission wanted benefits also to be imperiled by an individual's failure to mitigate back pay, it would

have included such language in *N.J.A.C. 4A:2-2.10(d)*⁴. Accordingly, in general, Ferro is entitled to benefits during the entire improper separation period regardless of his failure to mitigate his back pay award during certain periods of his separation.

Concerning vacation leave, the record indicates that Ferro was reinstated on December 1, 2021. In his request, Ferro indicates that he was not afforded any vacation time upon his reinstatement in 2021, which the BCSO has not disputed. However, as of that date, under *N.J.S.A. 11A:6-3(e)* and *N.J.A.C. 4A:6-1.2(g)*, Ferro was entitled to his carried over one year of vacation time for 2020¹, as well as one year of vacation time for 2021², which was apparently not provided. Since, under *N.J.S.A. 11A:6-3(e)*, Ferro is foreclosed from carrying the vacation time that he should have received in 2021 past 2022, and the Commission cannot ignore the clear language of the statute, it would be inequitable to deny Ferro the vacation leave benefit he should have received in 2021 because the BCSO failed to afford it to him at the time he was entitled to receive it. Therefore, as an equitable remedy based on the foregoing unique circumstances, the BCSO shall compensate Ferro for the one year of earned vacation that he should have received in 2021. The Commission shall leave it to the BCSO's discretion as to how it should compensate Ferro, such as providing him paid administrative leave time³, a payment, or some other form of compensation which equals the time lost.

Referring to sick leave, as there is no duty to mitigate sick leave benefits and sick leave can accumulate from year to year without limit, Ferro is entitled to receive credit for unused sick leave for the entire time of his improper separation without regard to his mitigation efforts.

Regarding health insurance premiums that were withheld without benefit, Ferro states that the BCSO withheld \$6,410.50 for insurance premiums although he did not receive insurance coverage from the BCSO during this time. The BCSO has not disputed this claim. Therefore, the BCSO shall reimburse Ferro for this amount.

Concerning health insurance premiums that Ferro paid through his wife's employment to maintain his health insurance, such reimbursement is not authorized under *N.J.A.C. 4A:2-2.10(d)*. See *In the Matter of Frank Taylor* (CSC, decided April 17, 2013).

¹ However, that vacation time, had it been properly awarded and not all used upon his reinstatement in December 2021, would not have been able to be carried over to 2022.

² This vacation time could be carried over to 2022. However, at the beginning of 2023, only any unused 2022 vacation leave could be forwarded and any 2021 leave not used would be lost.

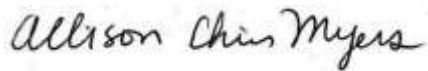
³ Administrative leave time for local employee is not governed by Civil Service law and rules.

ORDER

Therefore, it is ordered that Christopher Ferro be awarded vacation and sick leave benefits, and amounts expended to maintain health insurance coverage as indicated.

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 25TH DAY OF SEPTEMBER, 2024



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