

B-45



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Mildred Davis,
Department of Labor and Workforce
Development

Administrative Appeal

CSC Docket No. 2015-3077

ISSUED: **OCT 14 2015**

(SLD)

Mildred Davis, a Principal Examiner, Unemployment Tax, with the Department of Labor and Workforce Development (DOL), appeals the adjustment of her leave allowances due to an unpaid leave of absence.

On appeal, Davis argues that the proration of her leave time, upon her return from an unpaid leave of absence, was incorrectly calculated. In this regard, Davis notes that she was on an unpaid leave of absence from September 25, 2014 through January 11, 2015. Davis argues that her leave entitlements for 2015 were reduced by a full month's allotment rather than a half month's allotment. In this regard, she asserts that she was told that pursuant to *N.J.A.C. 4A:6-1.5(b)*, since she was not on the payroll on the 9th day of the month, she was not entitled to any leave time for January. The appellant argues that this determination is unfair since she was in pay status for 20 days in January. Moreover, she notes that for January 2015, the last day of the first pay period was January 10th and the first work day of the new pay period was January 12, 2015. Therefore, she asserts that she should have received at least a half month's allotment for January 2015.

In response, the appointing authority reiterates that Davis' leave allowances were correctly calculated pursuant to *N.J.A.C. 4A:6-1.5(b)*. In this regard, it notes that Davis is entitled to 15 sick days or 105 hours of sick leave, and 25 vacation days or 175 hours of vacation leave. Therefore, she earns 8.75 hours of sick leave and 14.58 hours of vacation leave per month. Accordingly, pursuant to *N.J.A.C. 4A:6-1.5(b)* her leave time for 2015 was reduced by 8.75 hours of sick leave and

14.58 hours of vacation leave, leaving her with 96.2 hours of sick leave and 160.4 hours of vacation leave.¹

CONCLUSION

N.J.A.C. 4A:6-1.5(b) provides that:

An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

Initially, it is noted that the appointing authority correctly calculated the proration of Davis' leave time for January 2015. In this regard, in *In the Matter of Janet McSloy* (CSC, decided May 26, 2010), the Civil Service Commission (Commission) noted that *N.J.A.C.* 4A:1-1.3 defined "days" as "calendar days unless otherwise specified." Therefore, the Commission found that the "9th" and "23rd" in the rule referred to actual dates of the month and not number of days worked and since McSloy was not in pay status from the 9th through the 23rd, a full month's leave allowance was properly deducted. The Commission also noted that even if the rule referred to the number of days worked, McSloy had only been in pay status for eight days during the month in question. However, in *In the Matter of David Berkley* (CSC, decided May 1, 2013), the Commission relaxed the provisions of *N.J.A.C.* 4A:6-1.5(b), to provide an employee with a half month's allowance even though he was not in pay status from the 9th through the 23rd days of the month, as he was in pay status for 18 calendar days, which was more calendar days than the time period encompassed by the 9th through the 23rd days of the month. In the instant matter, Davis similarly was in pay status for 20 calendar days, which are more calendar days than the time period encompassed by the 9th through the 23rd days of the month. It seems patently unfair to penalize this employee by not providing her with any prorated leave time for January, despite working more days than are encompassed within the required dates, simply because the dates she worked were not within those required dates. Moreover, *N.J.A.C.* 4A:6-1.5(b) also provides that an employee who works more than 23 days earns a full month's allotment of leave time. *N.J.A.C.* 4A:1-1.2(c) provides that the Commission may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes. Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the

¹ The appointing authority noted that the Electronic Cost Accounting and Timesheet System (eCats) rounded Davis' sick and vacation leave balances to 96.2 and 160.4, respectively.

provisions of *N.J.A.C.* 4A:6-1.5(b) and credit Davis with one-half month's allowance of sick and vacation leave time.

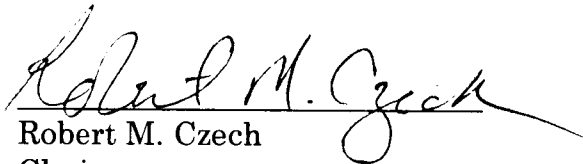
One matter warrants additional comment. As previously noted in *In the Matter of David Berkley, supra*, the wording of *N.J.A.C.* 4A:6-1.5(b) may lead to illogical results, as evidenced by the instant matter. Therefore, it is recommended that *N.J.A.C.* 4A:6-1.5(b) be reviewed by the Division of Agency Services and for it to recommend the appropriate changes to the Commission.

ORDER

Therefore, it is ordered that this appeal be granted.

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 7TH DAY OF OCTOBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Mildred Davis
Thomas Healy
Kenneth Connolly
Walker Ristau
Joseph Gambino