



B-46

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Tinishia Williams,
Department of Human Services

Administrative Appeal

CSC Docket No. 2015-1836

ISSUED: **OCT 14 2015** (SLD)

Tinishia Williams, a Practical Nurse at Ancora Psychiatric Hospital, Department of Human Services (DHS), appeals the adjustment of her leave allowances due to her intermittent unpaid leave usage.

By way of background, the appellant is serving in a 40 hour work week title. Therefore, based on the length of the appellant's service, she is entitled to receive up to 20 days or 160 hours of vacation leave and 15 days or 120 hours of sick leave.

On appeal, the appellant argues that the appointing authority has improperly reduced her vacation and sick leave entitlements. Specifically, she maintains that although *N.J.A.C.* 4A:6-1.5(c) provides that the reduction happens after 11 days of unpaid leave, the appointing authority reduced her entitlements after only 10 days. In support, she submits a December 12, 2013 memorandum that indicated that she had used 70 unpaid leave days,¹ and that her leave entitlements were reduced by 35 hours of sick leave and 46.9 hours of vacation leave, and that her current leave balances were negative 35 hours of sick leave and negative 46.9 hours of vacation leave. An April 14, 2014 memorandum indicated that she had used 30 unpaid leave days² and thus her entitlements were reduced by 15 hours of sick leave and 20 hours of vacation leave and that her current leave balances were

¹ The appellant also provided several notices, also dated December 26, 2013, indicating that her anniversary date was changed pursuant to *N.J.A.C.* 4A:3-4.6(a)2, for each episode of an aggregate of 10 unpaid days of leave from January 1 through November 26, 2013.

² There is no indication as to what the 30 days of unpaid leave were included in the April 14, 2014 notice.

105 hours of sick leave and 139.9 hours of vacation leave. An August 12, 2014 memorandum indicated that she had used 10 unpaid leave days³ and thus her entitlements were reduced by 5 hours of sick leave and 6.67 hours of vacation leave and that her current leave balances were negative 5 hours of sick leave and negative 6.67 hours of vacation leave. A November 28, 2014 memorandum indicated that the appellant had used 20 unpaid leave days⁴ and thus her entitlements were reduced by 10 hours of sick leave and 13.34 hours of vacation leave and that her current leave balances were negative 10 hours of sick leave and negative 6.67 hours of vacation leave.⁵ The memorandums referenced *N.J.A.C. 4A:6-1.5(c)* which provides in relevant part that intermittent days off without pay shall be aggregated, and when the intermittent days off without pay, "equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement." The example provided by the memorandums stated:

For every 10 days of UNPAID LEAVE a half month of SICK and VACATION time is deducted from your time balance. If you earn 120hrs [sic] of VACATION, you earn 10 hours of VACATION per month. **HALF a month would be 5 hours of VACATION taken back for every 10 days you are out of pay status.** (Emphasis in original.)

The memorandums also indicated that 10 hours would be deducted from each pay, until the balances were brought to zero and that her time for 2014 could not be granted until her negative balances were cleared.

The appellant maintains that with regard to the December 12, 2013 memorandum, she also received several notices concerning the change to her anniversary date that listed the 70 unpaid days referenced in the December 12, 2013 memorandum. However, she maintains that several of the dates listed by the appointing authority as unpaid days were either a holiday that she was not compensated for or that she worked but the time was converted to regular pay instead of holiday pay, and/or were other days that she had actually worked.

The appellant also asserts that with regard to the April 4, 2014 memorandum, she was never provided a list of the dates that were counted for the 30 days of unpaid leave. However, the appellant also claims that she was not properly compensated for the holidays on January 1, 2014, a day she did not work

³ The appellant submitted a "Negative time balances" notice dated August 12, 2014 which indicated that the 10 days of unpaid leave occurred between March 26, 2015 and July 26, 2015.

⁴ The appellant submitted a "Negative time balances" notice dated November 28, 2015 which indicated that the 20 days of unpaid leave occurred between August 6, 2014 and November 3, 2014.

⁵ Although the memorandum indicated that her entitlements were being reduced by 13.34 hours of sick and 10 hours of vacation, the notice correctly indicated that it was the reverse.

and January 20, 2014, a day she worked but did not receive her regular compensation.⁶ The appellant also questioned the appropriateness of her time allotments for 2014 not being available for her to use, until the overdrawn time was deducted from her paychecks.

With regard to the August 12, 2014 memorandum, she notes that since she was not provided the dates in question for the April 4, 2014 memorandum, she is unable to tell if she was charged twice for several dates in March that were listed on the August 12, 2014 memorandum. Finally, with regard to the November 28, 2014 memorandum, she questions how she is being found to be on an unpaid leave, when she is working and receiving 40 hours of pay per work. In this regard, she asserts that none of the dates listed had a notation of being "LAW" (Leave of Absence Without Pay) on her time sheet since her overtime was converted to compensate her for those days. The appellant contends that the appointing authority has created a hostile work environment by not timely notifying her that time would be taken from her, thereby causing her to have more days in an unpaid status.

In response, the appointing authority reiterates that the appellant's leave allowances were correctly calculated. Specifically, it argues that on the 11th unpaid day, a half a month of sick and vacation leave time was deducted for each 10 days of unpaid leave. Moreover, it maintains that it is allowed to utilize any overtime hours week to "cover any unpaid days" within that same week. However, those unpaid days are still included when calculating the 10 unpaid days. Additionally, the appointing authority maintains that it is its policy that employees cannot use their time at the start of the new year, if they have any negative balances from the preceding year. Finally, it asserts that it is the practice of its timekeeping unit to properly compensate all employees for the hours that the employee worked, and it encourages interaction between the timekeeper and the employee regarding any discrepancies within 10 days so that an employee can be properly compensated if needed.

CONCLUSION

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

⁶ In *In the Matter of Tinishia Williams* (CSC, decided June 18, 2014) the appellant argued that she was entitled to both her base pay and overtime compensation (at the rate of one and one-half times her hourly rate) for the hours she worked on the holidays, regardless of her pay status on the days immediately preceding the holidays. In this regard, although the appointing authority had paid the appellant overtime for the holidays in question, it did not pay her straight time as she was not in pay status the day preceding the holiday. It is noted that only the appellant's compensation for the holidays on November 11 and 28, 2013 were timely appealed. The Civil Service Commission found that pursuant to *N.J.A.C.* 4A:3-5.8(c), since the appellant worked both holidays, she was entitled to overtime compensation at the rate of one and one-half hours, for all hours worked on the holidays in question, in addition to her regular rate of pay for each day.

In State service, intermittent days off without pay other than voluntary furlough or furlough extension days shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay other than voluntary furlough or furlough extension days equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

N.J.A.C. 4A:6-1.2(i) provides that an employee who exhausts all paid vacation leave in any one year shall not be credited with additional paid vacation leave until the beginning of the next calendar year and it refers to *N.J.A.C. 4A:6-1.5(b)2* for State service. *N.J.A.C. 4A:6-1.5(b)2* provides that an employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

Initially, with regard to the appellant's complaint that her time was not credited to her on January 1, because she had a negative leave time balance from the preceding year, *N.J.A.C. 4A:6-1.2(i)* and *N.J.A.C. 4A:6-1.5(b)2* provide that an employee is not to be credited with paid vacation or sick leave, until the amount of leave used in excess of the prorated entitlement has been reimbursed. Accordingly, the appointing authority correctly did not credit her with her leave entitlements on January 1st as she had negative leave balances.

The appellant also claims that the appointing authority improperly used time she worked as "overtime" to meet her required 40 hours, but still included those days as unpaid leave days. However, the Commission does not agree. In this regard, *N.J.A.C. 4A:3-5.5(a)1* provides in pertinent part that employees in covered fixed workweek titles (35, 40) shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the [Commissioner] or his or her representative for time worked in excess of 40 hours per week. Therefore, since the appellant had not yet worked her 40 hours for that week, the time she worked as "overtime" could only be compensated at her normal rate of pay, since she had not yet worked 40 hours. However, the change of her "overtime" hours to regular hours does not negate the fact that she utilized unpaid leave for some of the 40 hours she was required to work that week. Accordingly, the appointing authority correctly counted those unpaid days to determine when her leave entitlements were to be prorated.

However, the appointing authority incorrectly reduced the appellant's leave entitlements after she had an aggregate of 10 days of unpaid leave. In this regard, *N.J.A.C. 4A:6-1.5(c)* specifically provides, in part, that when intermittent days off without pay *equal 11 working days*, the employee's vacation and sick leave credit

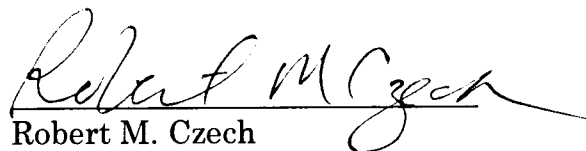
shall be reduced by one-half of one month's entitlement. For example, the New Jersey Electronic Cost Accounting and Timesheet System (eCats), utilized by a number of State appointing authorities, reduces an employee's leave entitlements after an aggregate of 11 working days, or 77 hours for a 35 hour employee or 88 hours for a 40 hour employee. This aggregation by eCats includes all unpaid time, including any hours or partial hours taken by an employee. Therefore, the appellant's leave time should have only been reduced after an aggregate of 11 unpaid working days, or 88 hours (8 hour work day multiplied by 11 work days). Consequently, the appellant's time was incorrectly prorated based on the appointing authority's incorrect application of *N.J.A.C. 4A:6-1.5(c)*. However, since it appears that the appointing authority only counted full work days that were taken as unpaid leave, it is impossible to determine from the record, how much if any time the appellant should be compensated for. Therefore, the appointing authority should review the appellant's time usage for 2013 and 2014 and recalculate the aggregation of her unpaid leave time to determine the appropriate amount of leave time that is to be deducted. Finally, as of the date of this decision, the appointing authority should be calculating the aggregation of intermittent unpaid leave as discussed above, for all employees.

ORDER

Therefore, it is ordered that this appeal be granted in part.

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



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