

B-89



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Teresa Smiley,  
Senior Data Machine Operator

CSC Docket No. 2015-416

Request for Waiver of Repayment  
of Salary Overpayment

ISSUED: DEC 18 2016

(EG)

Teresa Smiley, a Senior Data Machine Operator with the Department of Corrections (DOC), 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.

The record indicates that the petitioner was first appointed to a position with DOC in May 1997. In a letter dated July 25, 2014, the DOC informed the petitioner that an audit of her vacation time credited and used indicated that she had been credited with additional vacation time to which she was not entitled since January 1, 1998. This resulted in the petitioner using 81.5 hours of vacation leave in excess of her entitlement. Based on the foregoing, the DOC advised the petitioner that she was liable for vacation leave used in excess of her entitlement and submitted the information regarding her salary overpayment to Centralized Payroll for correction.

In the present request, the petitioner argues that she had no idea that she was receiving vacation leave in excess of her entitlement. She also state that prior to joining the DOC, she had worked at the Atlantic County Prosecutor's Office for seven years. The petitioner believes that her time at the county was added to her service time which led to the overpayment of vacation time. Additionally, the petitioner asserts that she works a second job to support herself and her two children. She contends having additional funds taken from her pay will create an economic hardship as she is already struggling to pay her bills. Further, the

petitioner requests that if a waiver is not granted, that she be given the same length of time to repay the overpayment that extra time was given to her, 15 years.

The appointing authority, despite being provided the opportunity, did not provide any further evidence or arguments for the Commission to review.

### CONCLUSION

*N.J.A.C. 4A:6-1.2 et al* indicates the amount of vacation leave full-time State employees in the career service are entitled to based on length of service. In addition, *N.J.A.C. 4A:6-1.5* provides that employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.

*N.J.A.C. 4A:3-4.21* Salary overpayments: State service, provides as follows:

- (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 appellant 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. Further, no vested or other rights are accorded by an administrative error. See *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).

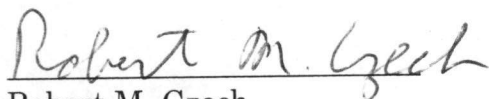
The record clearly shows that administrative errors resulted in the salary overpayment. However, as noted above, the petitioner cannot benefit from the error. Further, although the petitioner claims that repayment of the overpayment amount would result in hardship, the petitioner has failed to present any specific evidence, such as her total monthly income and expenses, to substantiate her claim of hardship. *See In the Matter of Yvette Waugh, et al.* (Commissioner of Personnel, decided October 25, 1996) (Lack of documentation in support of claimed economic hardships did not warrant waiver of salary overpayment for employees erroneously awarded salary at the fourth step of the salary range). Additionally, the petitioner is only required to repay 81.5 hours. In this regard, the appointing authority and the petitioner are encouraged to establish a reasonable repayment schedule. Therefore, a sufficient basis does not exist to grant a waiver of the repayment at issue pursuant to *N.J.A.C. 4A:3-4.21*.

### ORDER

Therefore, it is ordered that this request for a waiver of the repayment be denied.

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 16TH DAY OF DECEMBER, 2015



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