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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Thomas Borr,
State Parole Board

CSC Docket No. 2015-2670

Request for Waiver of Repayment
of Salary Overpayment

ISSUED: **SEP 16 2015** (JET)

Thomas Borr, an Assistant District Parole Supervisor with the State Parole Board, 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.

By way of background, the petitioner was provisionally appointed to the title of Assistant District Parole Supervisor from his permanent title of Senior Parole Officer effective March 8, 2014. At the time of his provisional appointment, the appointing authority used applicable civil service rules¹ to determine his salary as \$111,152.80 (salary range K25, 10th step). Thereafter, the petitioner was appointed as a permanent Assistant District Parole Supervisor effective February 21, 2015. The appointing authority determined his salary for the position was \$112,542.21 (salary range K25, 10th step). Subsequently, on January 22, 2015, this agency notified the appointing authority that the petitioner's salary was disapproved, and the 2015 Compensation Compendium Section 1, Attachment B, paragraph 8, that was issued on December 17, 2014, provided the correct formula to calculate his salary.² As a result, the appointing authority re-calculated the appellant's salary based on the information in the Compensation Compendium. By way of letter dated March 9, 2015, the appointing authority notified him that, as a result of collective bargaining agreement changes, the petitioner's salary was changed from

¹ See *N.J.A.C. 4A:3-4.9(b)*.

² The Compensation Compendium consists of the Salary Regulations approved by the Chairperson, Civil Service Commission, and the Director, Office of Management and Budget, pursuant to the Annual Appropriations Act.

\$112,542.21 to \$102,206.40 (salary range K25, 8th step). Thereafter, by way of letter dated March 27, 2015, the Office of Management and Budget (OMB) notified the petitioner that he was in overpayment status in the amount of \$9,421.18. OMB indicated that the petitioner was required to participate in a salary repayment plan for 25 pay periods in order to repay the amount owed.

In his request for waiver of salary overpayment, the petitioner asserts that he decided to refinance his home after he was permanently appointed as an Assistant District Parole Supervisor. The petitioner adds that he had no reason to believe that his salary would be changed at the time he refinanced his home. In this regard, the petitioner contends that, by way of letter dated March 9, 2015, the appointing authority notified him that his salary would be changed from \$112,542.41 to \$102,206.40 as a result of a collective bargaining agreement. The petitioner adds that he contacted the appointing authority and inquired about the salary change, and he was informed that he would be making less money because it "made a mistake." In addition, the petitioner explains that the appointing authority did not notify him that he would participate in a salary repayment plan. He states that he did not discover that he was in repayment status until he reviewed his pay statement. In this regard, the petitioner states that \$376 is being deducted per paycheck and will continue to be deducted during the 25 pay periods of the repayment plan. As such, he is now making \$800 less per month as a result of the circumstances pertaining to the repayment plan and his lower salary. Moreover, the appellant asserts that he is being penalized due to his career choices, and he is concerned that he will be unable to pay his bills.

In support, the petitioner provides copies of his mortgage statement, car loan statement, earnings statements, and a contract listing amounts for home repairs. The documentation indicates that he pays \$1,903.38 per month in principal and interest on his mortgage, \$159 per month on his car loan, and it appears that he expects to spend about \$21,646 to \$24,212 in home repairs.

In response, the appointing authority asserts that the petitioner was appointed as a provisional Assistant District Parole Supervisor in March 2014, and he was permanently appointed from a promotional list to the title in February 2015. The appointing authority explains that the appellant's original salary level was correctly calculated based on a review of applicable civil service rules. Further, the original salary was approved by this agency and recorded in PMIS. The appointing authority adds that, by way of e-mail dated January 22, 2015, it was notified that the salaries for affected employees in the K bargaining unit, including the appellant's title, were adjusted with lower salary ranges as a result of collective bargaining negotiations. The appointing authority states that it was unaware it should refer to the Compensation Compendium to calculate the established salaries per the collective bargaining agreement. As such, the appellant's salary was properly re-calculated based on the information in the Compensation Compendium

and the collective bargaining agreements with a lower rate. However, the salary adjustment resulted in the petitioner being in overpayment status. As such, he is required to repay the salary overpayment that he received over a period of 25 pay periods.

In support, the appointing authority provides copies of the relevant pages of the collective bargaining agreement to show that the appellant's salary was correctly re-calculated and he is properly participating in the salary repayment plan.

CONCLUSION

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.

N.J.A.C. 4A:3-4.9(a) provides that, unless a different salary adjustment is established in a collective negotiations agreement, the following provisions shall be applied when employees are appointed to a title with a higher class code, except that in no event shall such adjustment result in a higher salary than that provided

for in this section (emphasis added). *N.J.A.C.* 4A:3-4.9(b) provides that employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range.

The petitioner's salary was calculated utilizing *N.J.A.C.* 4A:3-4.9(b) when he was provisionally appointed as an Assistant District Parole Supervisor. The collective bargaining agreement in effect for the title changed how promotional pay adjustments were to be calculated. The situation was not corrected until February 2015 when a new calculation of his salary was made based on *N.J.A.C.* 4A:3-4.9(a) and provided for in the 2015 Compensation Compendium, Section 1, Attachment B, paragraph 8.

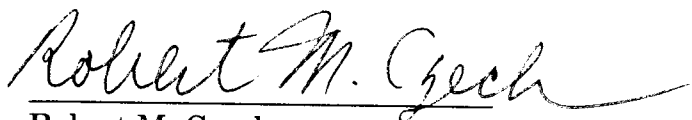
In the instant matter, the petitioner was unaware of the salary overpayment of \$9,421.18, notwithstanding the changes made by the collective bargaining agreement. Nonetheless, even assuming the petitioner was unaware of the salary overpayment, he has not shown that repayment, especially if based upon a reasonable repayment schedule, would result in economic hardship. Although the appellant claims that the repayment of the overpayment amount would create a financial hardship, he has failed to present any substantive evidence to establish a 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). However, the appointing authority initially calculated the petitioner's salary in March 2014 based on existing Civil Service rules, but the new salary regulations regarding how to calculate salaries for the impacted bargaining unit were not issued until December 17, 2014, almost 10 months after his provisional appointment. By applying the correct controlling salary regulation 10 months after his provisional appointment, it became clear that the petitioner was placed in overpayment status from March 8, 2014 through March 7, 2015. Although the petitioner received the benefit of the overpayments, based on the totality of the circumstances presented in this matter, and for equitable reasons, the Commission finds it is reasonable to reset the repayment dates. As such, the repayment amount will be re-calculated from December 27, 2014, the beginning of the pay period immediately after the Commission recorded the revised salary regulations, to March 7, 2015.

ORDER

Therefore, it is ordered that this request be granted in part and that the petitioner's repayment schedule be adjusted accordingly.

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 SEPTEMBER, 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

Attachment

c: Thomas Borr
Lise-Kirsten Higgins
Kenneth Connolly
Joseph Gambino

