



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Alexandria DiNoia,
Division of State Police

CSC Docket No. 2016-611

Request for Waiver of Repayment
of Salary Overpayment

ISSUED: OCT 25 2016 (SLD)

Alexandria DeNoia, an Investigator 4, Law and Public Safety, with the Division of State Police, Department of Law and Public Safety, requests a waiver of repayment of 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 appointing authority appointed the appellant to the title Clerk Typist 2, Evidence Handler (\$45,027.83, step 5, salary range A13). Subsequently, the appellant filed a request for a classification review. The appellant pursued the matter of her reclassification with the Division of Agency Services (Agency Services). Agency Services reviewed all documentation supplied and determined that the appropriate title for her position was Investigator 4, Law and Public Safety, effective April 19, 2014 (\$48,315.36, step 3, salary range P18).

The appellant was notified that as a result of the foregoing, her title and salary were corrected retroactive to April 19, 2014 and that as a result she was entitled to differential pay of \$4,274.20. However, she was further informed that since her prior title of Clerk Typist 2, Evidence Handler was a "35" title, but her current title was an "NE," she was no longer entitled to any overtime payments after April 18, 2014. In this regard, it noted that employees in "NE" (non-limited, non-exempt) titles are not normally eligible for cash compensation for overtime prior to working 40 hours. See *N.J.A.C.* 4A:3-5.3, 5.6 and 5.7. Therefore, she was

told to remit payment in the amount of \$4,764.10 to repay the amount of overtime she had received.

On appeal, the appellant argues that the "unfortunate consequence" of her "much deserved reclassification" will result in a financial hardship to her. Moreover, she maintains that the overpayment was not through any fault of her own. The appellant asserts that, since April 2014, she was unselfishly working extended hours to better serve the appointing authority and the "innocent victims" that it serves.

In response, the appointing authority notes that after the appellant's workweek was retroactively changed from a "35" to a "NE" workweek, the overtime hours she worked from April 19, 2014 through June 12, 2015, were adjusted. Therefore, the \$4,764.10 she received in cash compensation for working between 35 and 40 hours per week was converted to compensatory time, and she was told to remit payment of the \$4,764.10. The appointing authority maintains that the Department of the Treasury, Centralized Payroll informed it that the differential pay that was owed to the appellant as a result of her reclassification was to be remitted to her. However, she was also required to repay the \$4,764.10 for overtime she was no longer entitled to. Finally, the appointing authority notes that the appellant was sent checks, totaling \$4,274.20, for the difference in salary between her prior title and her current title, which she cashed and then she made the instant request. As a result, no further action was taken, pending a determination of this matter.

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.

The appellant requests a waiver of the salary overpayment since she claims that she was not at fault for the overpayment. Rather, it was due to her unselfish diligence in performing her duties, while waiting for her reclassification. The rule provides that an overpayment that resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status, may be waived. See *N.J.A.C. 4A:3-4.21(a)2*. However, the overpayment in the instant matter was due to a delay in the processing of the change the appellant's title. Therefore, there does not appear to be any "error" in this matter.

Moreover, although the appellant asserts that any repayment amount would result in economic hardship to her, other than general statements, she has not provided any specific information concerning her economic situation. See *In the Matter of Ruth Samonski* (Commissioner of Personnel, decided July 5, 2005) (Waiver of repayment of a salary overpayment in the amount of \$20,568.40 for improperly receiving SLI benefits denied, where the appellant failed to provide any information to establish that the repayment would cause an economic hardship). Compare, *In the Matter of Betty Munoz* (Commissioner of Personnel, decided March 16, 2000) (Waiver of repayment of a salary overpayment that represented 3.9% of the gross salary of an employee who was a single parent with two children granted); *In the Matter of Peter Spencer* (Commissioner of Personnel, decided December 13, 1996) (Waiver of salary overpayment granted since repayment would cause an economic hardship based on employee's level of compensation). Additionally, although the repayment amount in this matter is \$4,764.10, she has already received \$4,274.20 for differential pay, leaving a difference of \$489.90. Moreover, the appointing authority has indicated that she has already been compensated for the additional hours she worked with compensatory time. Further, since the appointing authority has failed to set a repayment schedule, it cannot be demonstrated that the amount the appellant would be required to pay per bi-weekly pay period would create a hardship to her. However, the appointing authority and the appellant are encouraged to set a reasonable repayment schedule for her to repay the \$4,764.10.

ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the salary overpayment by Alexandria DiNoia, 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 19TH DAY OF OCTOBER 2016



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