



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of William Munyon

CSC Docket No. 2016-3108

Administrative Appeal

ISSUED: **NOV 3 0 2016** (DASV)

William Munyon, a Trooper 2 with the Division of State Police, Department of Law and Public Safety, requests restoration of prior State service in order for his personnel record to reflect continuous service.

By way of background, effective January 29, 2002, the petitioner received a permanent appointment as a Correction Officer Recruit and was then appointed as a Senior Correction Officer on February 8, 2003 with South Woods State Prison, Department of Corrections (DOC). He resigned in good standing, effective Saturday, February 4, 2006,¹ in order to prepare for training as a Trooper with the Division of State Police. On July 28, 2006, the petitioner received an unclassified appointment as a Trooper and is currently serving as a Trooper 2.

In his request to the Civil Service Commission (Commission), the petitioner states that he began his training at the New Jersey State Police Academy (Academy) on Monday, February 6, 2006. Thus, he maintains that he has been serving continuously for the State since 2002, as reflected in the pension system. Moreover, he contends that he was not advised that a leave of absence from his DOC position was required upon entering the Academy to allow his State service to be uninterrupted. Additionally, the petitioner gives examples where Troopers' records were corrected to reflect continuous State service. He maintains that, like them, he should not be considered to have a break in service. In one case, the

¹ The petitioner indicates that he resigned on Sunday, February 5, 2006. However, personnel records indicate that his resignation was effective February 4, 2006.

petitioner explains that a Trooper² resigned his Correction Sergeant position with East Jersey State Prison, DOC, and successfully obtained a leave of absence from the DOC after completing the Academy to cover the dates that the Trooper attended the Academy. It is noted that agency records indicate that this employee resigned in good standing from the DOC on June 26, 2003 and received an appointment as a Trooper with the Division of State Police effective June 27, 2003. In the transaction report of his June 27, 2013 appointment, there is a notation which states "correcting history" and shows a prior separation date of January 27, 2003. Additionally, from January 27, 2003 through June 26, 2003, the employee's record reflects a leave of absence for personal reasons. The petitioner indicates that he followed this Trooper's course of action and obtained approval from his prison administrator in 2013 for his retroactive leave of absence in 2006. However, the DOC informed him in 2014 that a "[r]eview of available records has failed to evidence any such employment records adjustment for anyone" and "it is not the practice of the [DOC] to place employees on a leave of absence to accept employment with another agency." Thus, the petitioner's request for leave was denied by the DOC. Further, the petitioner indicates that two other Troopers petitioned the Merit System Board (Board)³ to correct their records, and their petitions were granted in 2006. It is noted that these Troopers had previously worked for the Department of Insurance (presently known as the Department of Banking and Insurance) and the appointing authority in those instances supported the leave requests. *See In the Matter of Lawrence Williams* (MSB, decided February 22, 2006) and *In the Matter of Patrick Balunis* (MSB, decided January 31, 2007).⁴ In another matter, the petitioner states that a Sergeant First Class had his prior State service restored for vacation entitlement purposes without petitioning this agency or requesting a leave of absence. All he obtained was a letter from a Lieutenant with the Division of State Police's payroll unit to authorize it.⁵ Thus, the petitioner contends that there is no consistent treatment of such requests or procedures and policies in place and the State employers are unable to provide a reason why.

In his case, the petitioner notes that the DOC referred him to *N.J.A.C. 4A:3-3.7B(e)* when he requested information about such policies. That regulation provides in part that when a Correction Officer Apprentice receives a regular appointment to Correction Officer Recruit and the individual had permanent status in another title in State service, the time of temporary appointment as a Correction Officer Apprentice shall be considered an unpaid leave of absence from his or her

² The Trooper is currently serving as a Sergeant with the Division of State Police.

³ On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Board to the Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Commission.

⁴ Currently, Balunis is a Sergeant and Williams is a Sergeant First Class with the Division of State Police.

⁵ It is noted that this Sergeant First Class was previously employed with the Casino Control Commission prior to his appointment as a Trooper with the Division of State Police in 1995. Further, his record with this agency does not indicate continuous State service.

original State position during the period of temporary appointment. The petitioner underscores that these permanent employees are automatically considered to be on a leave of absence while in a training academy. Therefore, for equitable reasons, the petitioner argues that he should be similarly treated. Accordingly, the petitioner requests that his prior service with the DOC be credited toward his years of State service for vacation leave purposes.

In response, the DOC reiterates its previous response to the petitioner "that it has been and continues to be the practice of the [DOC] not to place employees on a leave of absence to accept employment elsewhere." The employees must resign their position with the DOC. Additionally, the DOC notes that pursuant to the advice of the Department of the Treasury, a full-time employee is not permitted to be active on two separate payrolls simultaneously. As such, it states that the petitioner could not have been on a leave of absence from the DOC payroll while active on the Division of State Police's payroll. In support of its position, the DOC submits prior letters sent to the petitioner. In a letter dated April 4, 2016, the appointing authority advised the petitioner, among other things, that the Correction Sergeant whom he named resigned in good standing from East Jersey State Prison and any change in his record may have been done via an appeal to the Commission. It is noted that there is no record of a request to the Board or Commission in that regard.

CONCLUSION

Initially, it is noted that the Commission does not have jurisdiction over the vacation leave entitlement of unclassified employees with the Division of State Police. See *N.J.A.C. 4A:6-1.2(a)* (Full-time State employees *in the career service* shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service) (emphasis added). See also *N.J.S.A. 11A:6-2*. Thus, the part of petitioner's request regarding his vacation leave cannot be determined by the Commission. However, the Commission may adjust an unclassified employee's record, in order to restore prior service for purposes of continuous State service.

Nonetheless, in the instant matter, the petitioner's prior employer, the DOC, indicates that it is not its practice to grant a leave of absence to any employee who accepts employment with another agency. In that regard, *N.J.A.C. 4A:6-1.10(a)* provides in part that in State service, an appointing authority may, with Commission approval, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless otherwise provided by statute. The provisions of this rule are clearly discretionary. Thus, since the DOC does not support the petitioner's request for a leave of absence from his permanent career service position, there is not a sufficient basis for the Commission to adjust his

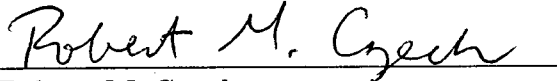
record. As to the petitioner's arguments regarding other employees, it is noted that in two of the four examples cited by the petitioner, the appointing authority was the Department of Banking and Insurance and it supported the requests of its former employers. The other case involved the Casino Control Commission, and it does not appear that the employee's record was adjusted. Regardless, as noted above, whether that employee received additional vacation leave in his unclassified title is not within the purview of the Commission. Moreover, in the case of the Trooper who resigned his Correction Sergeant position, it appears that his record was corrected and a leave of absence was recorded. While the DOC noted that he resigned, there is no record of him requesting restoration of his prior State service with the Commission or Board. Nonetheless, even if the DOC granted the employee's request and adjusted his record in 2004, this one approval does not provide persuasive evidence that the DOC abused its discretion in not supporting the petitioner's request. For instance, the record does not reveal any discriminatory or invidious motives against the petitioner. The Correction Sergeant's request could also have been approved in error, as the DOC emphatically submits that it does not approve such requests. Regardless, it is well settled that the petitioner cannot benefit from an administrative error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977) (No vested or other rights are accorded by an administrative error); *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). Further, while the petitioner argues that he should receive a leave of absence similar to a Correction Officer Apprentice, N.J.A.C. 4A:3-3.7B(e) which authorizes such action pertains only to a Correction Officer Apprentice and has no relevance or persuasive weight for the petitioner's case. Accordingly, the petitioner's request is denied.

ORDER

Therefore, it is ordered that this request 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 23RD DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: William Munyon
Elizabeth Whitlock
Kelly Glenn
Records Center

