



STATE OF NEW JERSEY

In the Matter of James Seaver,
State Parole Board

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-1345

Administrative Appeal

ISSUED: DEC 12 2016 (JET)

James Seaver, a Senior Parole Officer¹ with the State Parole Board, represented by Lauren Sandy, Esq., appeals the extension of his working test period.

By way of background, Seaver was appointed as a Parole Officer Recruit with the State Parole Board effective July 12, 2014. Upon his appointment, Seaver was required to attend training at the Basic Course for Investigators and complete concurrent 12-month training and 12-month working test periods (WTP). Therefore, if uninterrupted and his performance was satisfactory, Seaver would have been advanced to Senior Parole Officer effective July 12, 2015. However, on December 10, 2014, Seaver was involved in a one vehicle accident at the New Jersey State Police Sea Girt Academy and charged with reckless driving and failure to report a motor vehicle accident. As a result, on January 28, 2015, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) charging Seaver with conduct unbecoming a public employee, other sufficient cause, and violation of a rule, regulation, policy, or procedure and seeking a 180-calendar day suspension. On February 2, 2015, Seaver received an unsatisfactory rating on his progress report for the first half of his 12-month working test period, which ended on January 12, 2015. Thereafter, the parties entered into a settlement agreement

¹ It is noted that, at the time Seaver filed the appeal, he was serving as a Parole Officer Recruit.

on February 15, 2015,² which reduced the 180-calendar day suspension to a 52 working day suspension. As a result of the 52 working day suspension, the appointing authority extended Seaver's WTP to September 2, 2015.³ Thereafter, for reasons explained later in this decision, Seaver's WTP was again extended to December 10, 2015 and he was appointed as a Senior Parole Officer effective December 12, 2015.

On appeal to the Commission, Seaver asserts that he was improperly required to serve an extended WTP beyond a 12-month time frame. Specifically, he states that the appointing authority verbally notified him on July 7, 2015 that his WTP would be extended until September 2, 2015. However, he did not receive any paperwork pertaining to the extended WTP despite that he requested such information pursuant to *N.J.A.C. 4A:4-5.3(c)*. Moreover, Seaver argues that the appointing authority failed to properly request an extension of the WTP within five working days before the end of the initial WTP in accordance with *N.J.A.C. 4A:4-5.2(b)2*. Additionally, Seaver avers that he began serving the 52 working day suspension in March 2015. He explains that he forfeited 14 vacation days in lieu of his suspension, but was not out of the office and continued to work during that time. Further, the appointing authority permitted him to serve one suspension day per week in order for him to maintain benefits and seniority.⁴ In addition, Seaver explains that he received a satisfactory progress report in September 2015, but in November 2015, the appointing authority extended the WTP to December 2015.⁵ Therefore, due to the appointing authority's failure to properly notify him of the extensions and the improper extension, Seaver maintains the date of completion of his WTP should be July 12, 2015. In the alternative, he requests that the WTP completion date should be recognized as September 2, 2015.

In response, the appointing authority asserts that Seaver received a 52 working day suspension that warranted extension of the WTP. Further, although Seaver signed a form indicating that the WTP was completed on September 2, 2015, it cannot confirm who submitted the form for processing.⁶ As such, the appointing authority maintains that, since the form was erroneously submitted, September 2, 2015 is not the date Seaver completed the WTP. In addition, the appointing

² It is noted that the settlement agreement was silent regarding the impact on the working test period, and the resulting Final Notice of Disciplinary Action (FNDA) indicated that the specific days to serve the suspension were to be determined (TBD).

³ It is noted that the September 2, 2015 extension date is six months after the February 2, 2015 progress report was issued. As such, the WTP was extended for an additional six months.

⁴ Seaver acknowledges that the vacation time was deducted from his leave bank. He states that, in order to make up for his suspension days, he was required to serve additional time in order to complete the extended WTP. He acknowledges that the WTP consisted of a longer time frame after the suspension days were added.

⁵ This correspondence is not in the record nor has it been provided by Seaver.

⁶ It is noted that the record does not reflect any documentation indicating that Seaver acknowledged that the WTP was completed on September 2, 2015.

authority confirms that Seaver was allowed, via an in-house verbal agreement, to use his personal leave time to reduce the amount of suspension days without pay he was required to serve and he was authorized to work one day per week during the time of his suspension so he could maintain his pension and health benefits. Additionally, the appointing authority asserts that it did not receive Seaver's request for paperwork regarding the extension of the WTP until October 14, 2015. The appointing authority avers that, due to Seaver's unique situation, it could not provide information to him in response to his request without obtaining advice from this agency. In this regard, the appointing authority explains that it contacted this agency by e-mail in October 2015 and was advised that Seaver's 52 working day suspension should be added to his WTP beginning on the date after he served his last suspension day.⁷ The appointing authority adds that this agency also advised by e-mail that the in-house verbal agreement was not permitted and the days Seaver worked did not count toward the suspension. As such, it extended the WTP to December 2015 since Seaver served the last suspension day on October 29, 2015. The appointing authority adds that Seaver was notified of the extension on November 10, 2015.

In response, Seaver asserts that the appointing authority does not address why it did not provide documentation to him pertaining to the WTP extensions. Seaver avers that the Commission previously determined that not providing progress reports is inherently unfair and that the appointing authority falsely claims that the September 2015 report is erroneous. Further, he adds that the appointing authority improperly docked him for personal time that he took for the birth of his son⁸ and used it to improperly extend the WTP. As such, Seaver requests differential pay, benefits, seniority and counsel fees as a result of the improper extensions of the WTP.

According to official personnel records, Seaver used leave with pay from March 9, 2015 through March 20, 2015 (10 days). Official records indicate that the following days in 2015 are recorded as leaves *without pay*: March 25, April 1, April 8, April 15, April 22, April 29, May 6, May 13, May 20, May 28, June 4, June 11, June 18, June 25, July 1, July 9, July 16, July 23, July 30, August 6, August 13, August 20, August 27, September 3, September 10, September 17, September 24, October 1, October 8, October 15, October 22, and October 29. Thus, agency records indicate that he served 32 days without pay and it appears that 10 days with pay account for part of the vacation leave he forfeited. Although not recorded by this agency, Seaver indicated that he forfeited 14 vacation days and was advised that six sick days, one additional vacation day, and one administrative day were used to extend his WTP to account for the time he was out of the office.

⁷ The appointing authority contends that it contacted this agency in October 2015 in order to obtain advice regarding Seaver's unique situation.

⁸ It is noted that Seaver does not provide the dates that he was out from work due to his son's birth.

CONCLUSION

N.J.S.A. 11A:4-15 in conjunction with *N.J.A.C.* 4A:4-5.1(a) provide that the working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title. *N.J.A.C.* 4A:4-5.2(a) provides that the working test period shall begin on the date of regular appointment. *N.J.A.C.* 4A:4-5.2(d) provides that, in State service, persons appointed to entry-level law enforcement, correction officer, juvenile detention officer and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers.

N.J.A.C. 4A:4-5.3(b) provides, in pertinent part, that for entry level law enforcement officers, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.

N.J.A.C. 4A:4-5.2(e) states that an approved leave of absence including a furlough extension leave or a voluntary furlough shall extend the completion of the working test period for a period of time equal to that leave or voluntary furlough.

Seaver argues that since he did not receive any documentation from the appointing authority notifying him of the extension of the WTP, he should be considered to have completed it on July 12, 2015. The Commission disagrees. Although it is certainly the better practice to so inform the employee, there is no regulatory requirement that an employee be notified of an extension of a WTP due to a leave of absence. *N.J.A.C.* 4A:4-5.2(e) expressly provides that an approved leave of absence shall extend the completion of the working test period for a period of time equal to that leave. It is of no moment that the unpaid leave of absence was utilized in order to satisfy his suspension days, essentially, the appellant's working test period was extended in accordance with this regulation. The provision of an automatic extension of an employee's working test period in the event of an approved leave of absence, or in this case, intermittently served suspension days, ensures that the employee is afforded an adequate opportunity to demonstrate his or her ability to perform the job satisfactorily and to correct any deficiencies in job performance in a timely manner. To make a distinction between a formally requested and granted leave of absence and a period of intermittent suspension days would amount to putting form over substance. See *In the Matter of Christopher Lorenc* (MSB, decided January 31, 2007).

In this case, the appellant's job performance would not have been evaluated for a full 12-months of active service since he was clearly out of work and in an unpaid status for a total of 16 work days (a period of over three work weeks) prior to the anticipated WTP completion date of July 12, 2015. Therefore, as of the initial

ending date of July 12, 2015, the appellant could only have been evaluated little more than five months during the second half of his 12-month working test period. As such, Seaver's WTP should have been extended the 16 work days which would result in a completion date of August 11, 2015. However, he served four additional days of suspension during the extended WTP (July 16, 2015, July 23, 2015, July 30, 2015, August 6, 2015). When considering these four additional days, not including the weekend, the WTP would be automatically extended to August 17, 2015. During this automatic extension, the appellant served one day of suspension (August 13, 2015) which means the WTP would end on August 18, 2015. Further, Seaver indicated in his initial appeal submission dated September 17, 2015, that he utilized six sick days, one vacation day, and one administrative day. When considering these days, his WTP would be automatically extended to August 28, 2015. During that time frame, he served two suspension days (August 20, 2015, August 27, 2015) which, not considering the weekend, results in the WTP being extended to September 2, 2015.

As noted by the appointing authority, any time the appellant forfeited from his paid time off in lieu of suspension (*i.e.*, working in the office but having deductions made from the paid leave he accrued) cannot be considered to extend the WTP. Thus, since there is no evidence that his work performance was not satisfactory during this time frame, the Commission agrees that his WTP should not have been extended to December 2015. Rather, it should have been extended to September 2, 2015 and he should have been appointed to Senior Parole Officer at the beginning of the next pay period, effective September 5, 2015.

N.J.A.C. 4A:2-1.5(b) states that back pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

In this matter, Seaver has not demonstrated that the appointing authority took adverse action against him in bad faith or with invidious motivation when it extended his WTP completion date to December 2015. Rather, it is clear that the situation resulted from a series of administrative errors given the highly unusual situation. The record demonstrates that the appointing authority took reasonable steps to ensure that it properly calculated an extended date of completion of the WTP by contacting this agency on multiple occasions for guidance regarding how to resolve this unique, and complicated matter. Indeed, as further evidence of the good faith of the appointing authority, despite the seriousness of sustained charges and the imposition of major disciplinary action on a newly appointed law

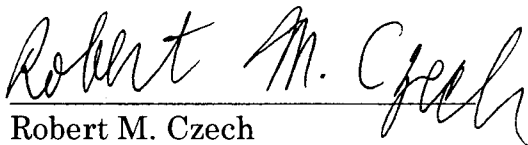
enforcement officer, the appointing authority permitted the appellant to serve a 52 working day suspension one day a week so that he could retain his health and pension benefits and to use his paid time off in lieu of suspension.

ORDER

Therefore, it is ordered that this appeal be granted in part and the completion date of Seaver's WTP be reflected as September 2, 2015. This date is for seniority and salary step placement only. It is also ordered that the effective date of Seaver's appointment to Senior Parole Officer be recorded retroactive to September 3, 2015. Finally, it is ordered that counsel fees are 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 7th DAY OF DECEMBER, 2016



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