



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of MaryEllen Marnien,
Department of Labor and Workforce
Development

Administrative Appeal

CSC Docket No. 2017-2457

ISSUED: MARCH 29, 2018 (SLD)

MaryEllen Marnien, a Supervising Examiner, Unemployment Tax, with the Department of the Labor and Workforce Development (DOL), appeals the adjustment of her leave allowances due to leave of absence.

By way of background, in 2016, the appellant was entitled to 175 hours (7 hours multiplied by 25 days) of vacation leave and 105 hours (7 hours multiplied by 15 days) of sick leave, per year, which was credited on January 1, 2016. On October 20, 2016, the appellant went on an unpaid leave of absence, and she returned to work on December 22, 2016. As a result of her unpaid leave of absence, her leave allowances were reduced by 43.75 hours (6.25 days) of vacation leave and 26.25 hours (3.75 days) of sick leave. *See N.J.A.C. 4A:6-1.5(b)*. In this regard, it was determined that since the appellant was not on the payroll from the 9th through the 23rd day of the month for any of those three months, she was not entitled to any leave time for the month of October, November and December. *See N.J.A.C. 4A:6-1.5(b)*.

On appeal, the appellant argues that the proration of her leave time for October was unfair. Specifically, she argues that there were 21 workdays in October and she was in paid status for the first 13 of those 21 days. Therefore, by deducting a full month's leave time for October, despite being at work for the first two weeks of October, she was penalized due to the mere fact that she was not in pay status from the 9th through the 23rd day of the month. The appellant notes that if she had instead been out intermittently for those eight days in October, then

pursuant to *N.J.A.C.* 4A:6-1.5(c), her leave time for October would have only been reduced by one-half of one month's entitlement as it was less than 11 days.

In response, the appointing authority reiterates that the appellant's leave allowances were correctly calculated pursuant to *N.J.A.C.* 4A:6-1.5(b).

CONCLUSION

N.J.A.C. 4A:6-1.5 provides, in pertinent part, that:

* * *

- (b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.
- (c) In State service, intermittent days off without pay other than voluntary furlough or furlough extension days shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay other than voluntary furlough or furlough extension days equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

Additionally, *N.J.A.C.* 4A:1-1.2(c) provides that the Civil Service Commission (Commission) may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, the appellant argues that it is unfair that she was not credited with one-half of one month's entitlement of leave time for October simply because she was not in pay status from the 9th through the 23rd day of the month, despite having worked 13 of the 21 work days for that month. In this regard, she notes that if she had been in unpaid status intermittently, her leave time would have only been reduced by one-half of the entitlement for October pursuant to *N.J.A.C.* 4A:6-1.5(c), since she was in unpaid status for less than 11 days.

In *In the Matter of Janet McSloy* (CSC, decided May 26, 2010), the Commission noted that *N.J.A.C. 4A:1-1.3* defined “days” as “calendar days unless otherwise specified.” Therefore, the Commission found that the “9th” and “23rd” in the rule referred to actual dates of the month and not number of days worked and since McSloy was not in pay status from the 9th through the 23rd, a full month’s leave allowance was properly deducted. The Commission also noted that even if the rule referred to the number of days worked, McSloy had only been in pay status for eight days during the month in question. However, in the instant matter, the appellant was in pay status for 19 calendar days, which are more calendar days than the time period encompassed by the 9th through the 23rd days of the month. It seems patently unfair to penalize this employee by not providing her with any prorated leave time for October, despite working more days than are encompassed within the required dates, simply because the dates she worked were not within those required dates. Additionally, *N.J.A.C. 4A:6-1.5(b)* provides that an employee who works more than 23 days earns a full month’s allotment of leave time. Moreover, *N.J.A.C. 4A:6-1.5(c)* provides in relevant part that intermittent days off without pay shall be aggregated, and when the intermittent days off without pay, “equal 11 working days, the employee’s vacation and sick leave credit shall be reduced by one-half of one month’s entitlement.” Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C. 4A:6-1.5(b)* and credit the appellant with one-half month’s allowance of sick and vacation leave time (or 7.29 hours of vacation leave and 4.38 hours of sick leave).

One matter warrants additional comment. The wording of *N.J.A.C. 4A:6-1.5(b)* may lead to illogical results, as evidenced by the instant matter. Therefore, it is recommended that *N.J.A.C. 4A:6-1.5(b)* be reviewed by this agency and for it to recommend the appropriate changes to the Commission.

ORDER

Therefore, it is ordered that this appeal be granted.

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 27TH DAY OF MARCH, 2018



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