



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Todd Boyer,
Department of Environmental
Protection

Grievance Appeal

CSC Docket No. 2018-6

ISSUED: OCT 23 2017 (SLD)

Todd Boyer, an Environmental Specialist 3, Department of Environmental Protection (DEP), appeals the denial of his March 2, 2017 grievance requesting that he be reimbursed monies that he repaid to Workers' Compensation.

By way of background, in 2013 the appellant suffered injuries due to a slip and fall and was placed on Workers' Compensation. Subsequently, the Division of Risk Management, Department of the Treasury, determined that his injury was not covered by Workers' Compensation and he was ordered to repay \$20,315.28. Thereafter, the appellant appealed to the Division of Workers' Compensation. Subsequently, the parties agreed to repayment in the amount of \$12,816.85 and dismissal of the appellant's appeal with prejudice. The appellant remitted payment in the amount of \$12,816.85 on June 30, 2016.

On March 2, 2017, the appellant filed a grievance in which he requested that he be reimbursed the \$12,816.85 that he repaid to Workers' Compensation. Specifically, he asserted that the DEP's initial incorrect determination that his injuries were covered by Workers' Compensation caused him harm. The appointing authority argued in part, that regardless of the whether or not the appellant's injury was compensable under Workers' Compensation, he received a settlement from the owner of the location he was injured at and thus was required to reimburse the Division of Workers' Compensation. Following a departmental grievance hearing, the Hearing Officer denied the appellant's grievance, finding that due to the \$60,000 he was awarded as a settlement from the owner of the location he was injured at, he was required to reimburse Workers' Compensation as the settlement

was equivalent to or greater than the liability of the employer or insurance carrier for his injury.

On appeal to the Civil Service Commission (Commission), the appellant argues that his grievance concerns an issue of general applicability in the interpretation of a law, rule or policy. Specifically, he asserts that the DEP's initial determination that his injury was a compensable injury under Workers' Compensation, was contrary to the Workers' Compensation law and rules, as evidenced by Risk Management's later determination that his injury was not compensable. Therefore, he requests a hearing so that a determination can be made as to which entity has the authority to determine eligibility for Workers' Compensation, and he requests reimbursement of all time used while injured and reimbursement of the \$12,816.85 he remitted to the Division of Workers' Compensation.

CONCLUSION

N.J.A.C. 4A:2-3.7(f)1 provides that, in grievance matters, the employee shall have the burden of proof. *N.J.A.C.* 4A:2-3.7(b) provides that grievances may be appealed to the Commission. The rule further provides:

1. The Commission shall review the appeal on a written record or such other proceeding as the Commission directs and render the final administrative decision.
2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission's decision will be a final administrative decision.

This standard is in keeping with the established grievance and minor disciplinary procedure policy that such actions should terminate at the departmental level. Moreover, in considering grievance actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the appointing authority. Generally, the Commission will not disturb appointing authority determinations in grievance proceedings unless there is substantial credible evidence that such determinations were motivated by invidious discrimination considerations, such as age, race or gender bias, or were in conflict with Civil Service rules.

The Commission has the right and duty to interpret and apply statutes, including those outside the Civil Service Act, to resolve the dispute before it. *See*

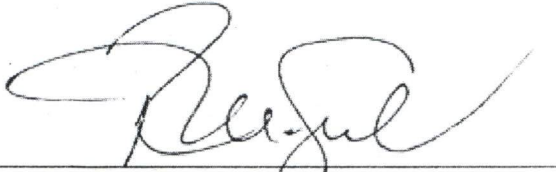
Matter of Allen, 262 N.J. Super. 438, 444 (App. Div. 1993); *In the Matter of Edison Cerezo, Police Officer, West New York*, Docket No. A-4533-02T3 (App. Div. October 15, 2004); *John Kowaluk v. Township of Middletown*, Docket No. A-4866-02T1 (App. Div., August 6, 2004); *In the Matter of Michael Giannetta* (MSB, decided May 23, 2000). Compare, *In the Matter of Sybil Finney, Judiciary, Vicinage 8, Middlesex County* (MSB, decided March 24, 2004) (It was determined that no jurisdiction existed to review a Judiciary employee's claim that the denial of a reasonable accommodation request violated the ADA, where the appeal was based *exclusively* upon an alleged ADA violation). However, it will only do so where such statutes implicate Civil Service law and rules. In the instant matter, the sole issue presented is what entity has the authority to make Workers' Compensation decisions. Since the Commission does not have jurisdiction over Workers' Compensation law and rules, it does not have the authority to review the appellant's grievance in this matter. Accordingly, the appellant's appeal is dismissed for lack of jurisdiction.

ORDER

Therefore, it is ordered that this appeal be dismissed.

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 18TH DAY OF OCTOBER, 2017



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