



STATE OF NEW JERSEY

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

In the Matter of Melanie Armstrong,
et al, Department of Law and Public
Safety

Administrative Appeal

CSC Docket Nos. 2020-2142 *et al*.

ISSUED: FEBRUARY 28, 2020

The Department of Law and Public Safety (LPS), on behalf of Melanie Armstrong, Christian Arnold, Christopher Edwards, Carol Henderson, Sharon Joyce, Kavin Mistry, Tracy Thompson, and Joy Vitoritt, requests a waiver of repayment of a 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, except for Armstrong, who had received over a 15% salary increase within the 12 months prior to the implementation of the program, the remaining seven employees received increases under the Management Salary Program (MSP) effective February 2, 2019. However, after the implementation of the MSP, LPS indicated that the salary increases were due to promotions received by these individuals in 2018 and submitted requests for additional salary increases. Given this new information, it became evident that these individuals should not have received salary increases, including retroactive payment, effective February 2, 2019. Rather, these individuals should not have received their salary increases until they served in the title to which they were promoted for one year per the MSP salary regulation.

In this regard, LPS states Armstrong’s salary increase on September 15, 2018 was actually based on her promotion to the Attorney General’s Executive Staff, even though her title remained the same. Thus, an increase under the MSP would be effective September 14, 2019. Regarding Arnold, his salary increase on September

15, 2018 was actually based on his elevation to the role of Deputy Director of the Division of Law. Thus, in accordance with the MSP, he would be eligible for an increase 12 months after his appointment to his new role, which would be September 14, 2019. LPS contends that Edwards' salary increase on April 17, 2018 was in actuality based on his promotion to the Attorney General's Executive Staff on April 17, 2018. As such, any increase under the MSP would be effective April 13, 2019. With respect to Henderson, her increase on December 22, 2018 was in reality based on her promotion to Bureau Chief of the Division of Criminal Justice. Accordingly, any salary increase under the MSP would be effective December 21, 2019. Concerning Joyce, LPS maintains that her salary increase on February 22, 2018 was based on her promotion to Director of the New Jersey Coordination for Addiction Responses and Enforcement Strategies. As such, her eligibility under the MSP would be February 16, 2019. LPS argues that Mistry was promoted to Deputy Director of the Division of Law on September 29, 2018 and his salary adjustment at that time was based on this movement. Therefore, Mistry's eligibility under the MSP would be effective September 28, 2019. On October 27, 2018, Vitoritt was granted a salary adjustment in order to bring her in line with the salaries of other Directors. As such, LPS contends that any salary increase under the MSP would be effective December 21, 2019.

Based on the above, LPS reports resulted in the following overpayments as of pay period 3/20: Melanie Armstrong \$0.00; Chris Arnold (\$3,869.22); Chris Edwards (\$1,212.60); Joyce Henderson (\$11,148.96); Sharon Joyce (\$502.91); Kavin Mistry (\$6,108.82); Joy Vitoritt (\$9,720.46) and Tracy Thompson (\$1,522.14).

In its request to the Commission, LPS states that the overpayments were not the fault of the affected employees and were the result of an administrative error. Based on its errors, LPS advises that it has secured approval from the Office of Management and Budget (OMB) to pay the costs of the overpayment through its LPS's budget, meaning that the waiver will result in the overpayments being collected, but not from the employees. Additionally, LPS emphasizes that it has evaluated the situations of each of the impacted employees and has determined that requiring the employees to repay the overpayments would cause an economic hardship to them. If LPS's request is approved, it states it will be in a position to effectuate the salary adjustments in accordance with the MSP.

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.

LPS has requested a waiver of repayment of the salary overpayment based on its multiple administrative errors and misunderstanding of the MSP. The Commission notes that when LPS questioned the correctness of the calculations of the final salary information for the impacted employees provided by this agency prior to the issuance of any increases under the MSP, this agency responded with specific rationale for each proposed action. However, LPS never responded or informed this agency at that time that the information was incorrect or that the impacted employees actually assumed higher level duties in 2018. As a result, the MSP was implemented based on existing information because LPS never indicated that the upward salary requests for the impacted employees were in actuality based on receiving promotions. Thus, none of these employees were in fact eligible for the MSP in February 2019.

The impact of its misapplication and multiple administrative errors in this matter has resulted in LPS receiving permission from OMB to assume the costs of these overpayments through its budget. In other words, as indicated by LPS, the salary overpayments will be collected, but not from the employees. However, the fact that LPS has made such an arrangement does not mean that the criteria required for the Commission to waive the salary overpayments in accordance with *N.J.A.C. 4A:3-4.21* has been satisfied. In this regard, while LPS presents that requiring these employees to repay the overpayments will cause them an economic hardship, it has not presented proposed repayment schedules or explained how these employees who received overpayments for less than one year would be detrimentally impacted. In fact, it has presented no specific evidence from any of

the employees demonstrating that repayment would cause actual economic hardship. For example, a repayment schedule of five years for the employee who received an overpayment of \$11,148.96 would result in a payment of \$85.76 for each pay period. As this employee's current salary is \$124,055.45 and the requested MSP for her would raise her salary to \$142,373.56, it does not appear that her situation would satisfy the provisions of *N.J.A.C.* 4A:3-4.21.

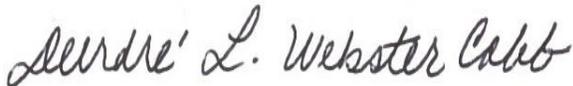
Rather, in this case, the salary overpayments will be repaid by LPS, *not* the employees. As such, it does not appear that a waiver of salary overpayment action by the Commission is even necessary. While the Commission will not interfere with any arrangement between LPS and OMB to permit LPS to absorb the costs of the overpayment for these employees in its budget,¹ the criteria for a waiver of the salary overpayment set forth in *N.J.A.C.* 4A:3-4.21 has not been satisfied.

ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the overpayment 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 26TH DAY OF FEBRUARY 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

¹ In fact, the Commission does not have the statutory jurisdiction to prevent an Executive agency from allocating its budgetary funds in any manner. However, the Commission is in no way endorsing LPS's repayments in this matter for the reasons presented.

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