



STATE OF NEW JERSEY

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

In the Matter of Ira Hock,
Department of Human Services

CSC Docket No. 2019-2542

Administrative Appeal

ISSUED: MAY 22, 2020 (SLD)

Ira Hock, a former Management Improvement Specialist 1 (MIS1),¹ Department of Human Services, 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, Hock was appointed to the title of MIS1, effective March 1, 2008, on step 10 of salary range Y-31.² Hock was then appointed to the unclassified title of Assistant Division Director (salary range &98) at a salary of \$109,794, effective January 17, 2018. Hock’s salary increased to \$111,440.91, effective July 7, 2018, due to an across-the-board increase. Subsequently, Hock returned to his permanent title of MIS1, effective October 27, 2018. For reasons that are unclear in the record, Hock was placed on step 10 of salary range Y-31 (\$121,043.14). Hock’s record was corrected to reflect his placement on step 8 of salary range Y-31 (\$112,977.64). As a result, on March 8, 2018 Hock was informed that he was overpaid in the amount of \$1861,32, which was to be recovered over the next six pay periods.

On appeal, Hock argues that “the pay decrease of about \$8,000 annually” was inappropriate and unfair. Specifically, he maintains that he was appointed “acting Director” in January 2018 with a raise from “\$105k to \$110k” and that for the

¹ Agency records indicate that Hock retired effective, May 31, 2019.

² Agency records indicate that an across the board went into effect

“following 14 months” he worked two jobs simultaneously. Hock argues that his “loyalty” in “stepping up to the plate” should be rewarded and not penalized. He further argues that in October 2018 he returned to his permanent position of MIS1 “since that title was now earning \$121k.” Hock maintains that if he had not accepted the “Acting Director” position he would have already received the \$121,043.14. Additionally, he maintains that it is “inequitable, unfair and contrary to good work ethics” that despite previously being on step 10 of your prior salary range (Y-31) as a MIS1, upon his return from an “Acting” position, has placed on step 8 of salary range Y-31 simply due to an esoteric civil service rule, “whose interpretation is in question” to cause his salary to be reduced. Moreover, he asserts that *N.J.A.C. 4A:3-4.12* could not have been written with the intention to “punish the worker who took on extra job duties and responsibility only to be demoted afterward to a lower salary” than he would have received had he not accepted the “acting” position.

Hock also asserts that a waiver of the salary overpayment should be granted as repayment of the overpayment has certainly created a hardship. In this regard, he contends that his salary was decreased \$500 per month. Moreover, he notes that his wife is out-of-work and he “assists his three children in varying means.” Finally, he contends that he purchased a new car in December 2018, with the idea that his salary was \$121,000.

Despite an opportunity to do so, the appointing authority has not submitted a response.

CONCLUSION

N.J.A.C. 4A:3-4.12 provides in pertinent part:

- (a) When a title is changed from a no-range or single rate category to a range in the Compensation Plan, or when an employee moves from a no-range title to a title having a salary range, the salary shall be adjusted up to the step in the range that is the same or next higher than the salary of the no range or single rate title and the anniversary date assigned based on the pay period the employee would have been eligible for an increase in the no range or single rate title, providing the following two criteria are met:
1. The Civil Service Commission finds that service in the no-range title provided the employee with significant experience and training for service in the range title; and
 2. The employee has served in the former title for four months or more.

- (b) When the employee's appointment does not satisfy the conditions in (a) above, salary and anniversary date shall be determined by reconstructing the employee's salary as if the employee had been serving in the range title on the date the employee was appointed to the no-range title, provided, however, that in no event shall the new salary be higher than the salary in the no-range title.

Additionally, *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.

It is well settled that **all** of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

The below table illustrates the applicable salary schedules:

Y-31	7/05/08	9/29/2018
Step 7	\$95,119.56	\$108,944.89
Step 8	\$98,640.54	\$112,977.64
Step 9	\$102,161.62	\$117,010.39
Step 10	\$105,682.50	\$121,043.14

Hock requests a waiver of the salary overpayment since he claims that it was unfair that was not placed on step 10 of salary range Y-31 upon his return to his permanent title of MIS1 from the “Acting Director” position. Hock maintains that it was “inequitable, unfair and contrary to good work ethics” that despite previously being on step 10 of his prior salary range (Y-31) as a MIS1, upon his return from an “Acting” position, he was ultimately placed on step 8 of salary range Y-31, pursuant to *N.J.A.C.* 4A:3-4.12, instead of step 10. Initially, it is noted that Civil Service laws and rules do not contemplate “Acting” appointments. Moreover, a review of agency records indicate that Hock received an appointment to the unclassified title of Assistant Division Director (a single rate title), effective March 31, 2018. Subsequently, effective October 27, 2018 Hock was returned to his previously held title of MIS1. Pursuant to *N.J.A.C.* 4A:3-4.12(a), when an employee moves from a no-range title to a title having a salary range, the salary shall be adjusted up to the step in the range that is the same or next higher than the salary of the no range or single rate title. In this matter, Hock’s salary as an Assistant Division Director was \$111,440.91. In relevant part, the salary schedule Y-31, effective September 29, 2018, indicates that Step 7 was \$108,944.89 and Step 8 was \$112,977.64. Therefore, upon Hock’s return to the title of MIS1 he was correctly placed on step 8, which was the step in the Y-31 range that was the “same or next higher than the salary of the no range or single rate title.” Hock argues that this rule could not have contemplated providing him with a lower salary than if had never been appointed to the Assistant Division Director position. However, even if his salary was to be reconstructed pursuant to *N.J.A.C.* 4A:3-4.12(b), that section of the rule specifically provides “that in no event shall the new salary be higher than the salary in the no-range title.” Accordingly, Hock was properly placed on step 8 of salary range Y-31, upon his return to MIS1.

With regard to Hock’s request of a waiver of the salary overpayment, although the record clearly shows that an administrative error resulted in the salary overpayments, Hock cannot benefit from the error, as he was not entitled to the higher compensation, unless he can satisfy the other conditions presented above. *See e.g., Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *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) (No vested or other rights are accorded by an administrative error).

Even assuming that Hock was reasonably unaware of the overpayment, he has not established that the repayment amount would result in an economic hardship. In this regard, Hock has failed to provide any specifics with regard to this. Instead, he merely claims that his wife is out of work, he provides “varying” amounts of money to his children and he purchased a new car. Therefore, based on the foregoing, Hock has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal 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
20TH DAY OF MAY, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Ira Hock
Lori Matozzi
Kelly Glenn
Records Unit