



unemployment benefits, he did not look for work, and he received Temporary Worker's Compensation. Therefore, based on Green's Affidavit, it adjusted his personnel record to indicate he was suspended from February 14, 2019 to February 28, 2019 (11 work days), he was on Worker's Compensation from March 1, 2019 to April 22, 2019, he was suspended from April 23, 2019 to May 19, 2019 (19 work days), he had unpaid time on May 20, 2019, he was on Worker's Compensation from May 21, 2019 to July 8, 2019, and he had unpaid time from July 9, 2019 until September 30, 2019. The appointing authority presents that under *N.J.A.C. 4A:2-2.10(d)9*, a back pay award is reduced during any time the employee is disabled. Therefore, it found that Green was not entitled to back pay. Further, the appointing authority states that Green collected Temporary Worker's Compensation benefits intermittently during the back pay period making him ineligible for back pay during those intervals.

Concerning Green's request regarding his Family and Medical Leave Act (FMLA) eligibility concerning the accumulation of 1,250 hours, the appointing authority states that this claim is unrelated to the settlement agreement as it is not mentioned in the agreement. Regardless, it asserts that it did respond inviting him to contact the appointing authority with any questions about the 1,250 hours, but it did not receive a response.

In reply, Green presents that when he returned to work on October 1, 2019, he received a check from the State in the amount of \$4,658.08. He believes that he is still owed approximately \$28,000. Green states that regardless of the form that he completed, allegedly incorrectly, to receive his back pay on September 30, 2019, the settlement agreement never stated that he would only receive his back pay if he completed all necessary forms properly. He indicates that the appointing authority was aware that he was seeking continued medical treatment with Worker's Compensation doctors due to his personal injuries he sustained while working years before that required back and neck surgeries. It was further aware that he had not received pay nor disability pay for that specific time. Green asserts that it was only after his Worker's Compensation claim that he made with the State after being injured and being on disability that various allegations were brought up against him. He contends that the various write-ups were in retaliation for him obtaining a Worker's Compensation attorney and then being out on disability for a period of time. Green requests that the Civil Service Commission (Commission) double check the calculation of the 1,250 hours for medical benefits and confirm that Green has enough time to credit him that would encompass the 1,250 hours in question.

In further response, the appointing authority reiterates its position that Green is not entitled to back pay during the two times he was collecting Worker's Compensation nor is he entitled to back pay for the other time during the mitigation period as he affirmed on his affidavit that he was unable to work.

Regarding Green's belief that various write-ups were in retaliation for him obtaining a Worker's Compensation attorney and then being out on disability, the appointing authority notes that the subject appeal was dated March 2, 2020, and this is the first time the appointing authority has heard this claim. It asserts that retaliation played no role in its determination as to whether he was owed back pay. In Green's Affidavit of Mitigation, he indicated that he was unable to work during the mitigation period due to injury. The appointing authority presents that the settlement agreement was not definitive that Green was owed money as his mitigation during the back pay time needed to be evaluated for earnings from other employment, receipt of unemployment, and to identify any time where he was disabled or unable to work. The conclusion was that either Green was collecting Worker's Compensation or unable to work during the pertinent time periods. Therefore, it argues that, under the Civil Service rules, he is not entitled to back pay. It further emphasizes that Green's request regarding his eligibility for FMLA based on the 1,250 hours of work criteria is not relevant to this enforcement action. However, it suggests that Green schedule an appointment with human resources to review his eligibility for FMLA.

### CONCLUSION

*N.J.A.C.* 4A:2-2.10(d)4 provides, in pertinent part, where a removal or a suspension for more than 30 working days has been reversed or modified, and the employee has been unemployed or underemployed for all or part of the period of separation, and the employee failed to make reasonable efforts to find suitable employment during the separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

*N.J.A.C.* 4A:2-2.10(d)9 provides that a back pay award is subject to reduction for any period during which the employee was disabled from working.

In this matter, the Commission finds that Green is not eligible to receive back pay. The record indicates that during the back pay mitigation period, Green was disabled and unable to work at least part of the time as he twice collected Worker's Compensation benefits during this time. As such, he is not eligible for back pay during these times under *N.J.A.C.* 4A:2-2.10(d)9. Concerning the remaining time, Green submitted an affidavit indicating that he was unable to work during the mitigation period due to an injury, he was awaiting neck and back pay surgery, he did not receive unemployment benefits, and he did not look for work. Therefore, based on his affidavit, Green was also unable to work for the rest of the mitigation period and ineligible for back pay during this time under *N.J.A.C.* 4A:2-2.10(d)9.

On appeal, Green asserts that he should not be denied back pay for allegedly incorrectly filling out a form. It is noted that Green's denial of back pay is

not based on this deficiency. Even if Green incorrectly filled out the form and could work during some of the mitigation period, as there is no evidence that Green sought work during this time, the Commission finds that he did make a reasonable effort to find suitable employment and is not eligible for back pay under *N.J.A.C. 4A:2-2.10(d)4*. Concerning the comments that the appointing authority was aware that Green was seeking continued medical treatment with Worker's Compensation doctors due to his personal injuries he sustained while working years before that required back and neck surgeries and was further aware that he had not received pay nor disability pay for that specific time, all back pay awards under Civil Service law and rules are subject to the provisions of *N.J.A.C. 4A:2-2.10(d)4* and *N.J.A.C. 4A:2-2.10(d)9* regardless as to whether or not those regulations are specifically indicated in a settlement. Additionally, the Commission would not permit any settlement that attempted to circumvent these regulations. Further, it was Green's responsibility to understand Civil Service regulations prior to entering into a settlement agreement.

With respect to Green's assertion that the appointing authority only disciplined him because he became injured and sought Worker's Compensation, without any evidence to support such a claim, this is an inappropriate and wholly unsubstantiated allegation. Regardless, there is no evidence that the determination of his back pay award was retaliatory. Indeed, as indicated above, the Commission has found that the appointing authority's determination in that regard was correct.

Finally, regarding the request that the Commission should double check whether he is eligible for FMLA based on the 1,250 hours of work criteria, such a request is outside the scope of this enforcement action. However, the Commission recommends that Green schedule an appointment with human resources to review his eligibility for FMLA as suggested by the appointing authority.

### **ORDER**

Therefore, it is ordered that this request 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 30<sup>TH</sup> DAY OF SEPTEMBER, 2020

*Deirdre' L. Webster Cobb*

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