



STATE OF NEW JERSEY

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

In the Matter of Mary S. Cardone,
Department of Military and Veterans
Affairs

Enforcement

CSC Docket Nos. 2020-2664

ISSUED: MARCH 5, 2021 (SLK)

Mary S. Cardone requests enforcement of the settlement agreement with the Department of Military and Veterans Affairs (DMAVA) that was acknowledged by the Civil Service Commission (Commission) in *In the Matter of Mary S. Cardone* (CSC, decided April 15, 2020).

By way of background, Cardone was removed on administrative charges as a Manager 1, Human Resources, effective July 2, 2018, and removed again in a separate matter, effective January 2, 2019. She appealed her removals to the Commission and the matters were transmitted to the Office of Administrative Law as contested cases and then consolidated. On February 18, 2020, the parties executed a settlement agreement where it was agreed that Cardone would receive two months back pay, from July 2, 2018 through September 2, 2018, that was subject to mitigation and the usual deductions that are withheld and included on a W-2 form. The parties indicated that it was the intent of the parties that the back pay and leave of absence be structured to avoid any break in service. Further, the parties agreed that Cardone's separation would be considered a resignation in good standing, effective January 18, 2019. The Administration Law Judge then issued an Initial Decision indicating that the parties had settled the matter. Subsequently, on April 15, 2020, the Commission acknowledged the settlement.

In her request for enforcement, Cardone initially indicated that she had not received the agreed upon back pay and her service record was not adjusted to reflect the leave of absence and the resignation in good standing with no break in service as agreed upon. Thereafter, she indicates that she did receive a check from DMAVA. Cardone states that her base wages were \$15,509.28 and total deductions were \$4,068.15, which equals \$11,441.13. However, she presents that she received a check

for \$5,312.13.¹ She requests an explanation as to the difference and where those funds went. She also states that she has no proof or written documentation that the repayment of unemployment has been satisfied nor has she been provided appeal rights regarding this.

Cardone states that in the Fall of 2020, her current supervisor² contacted DMAVA regarding her time balance updates.³ Her supervisor said that “something” has been received regarding this; however, Cardone is not aware as to what this “something” is since she was not copied. Thereafter, she met with her supervisor who showed her an un-redacted copy of her settlement agreement, which she is unaware as to how she acquired it. Cardone states that her supervisor has been emailing with DMAVA to get something in writing regarding her balances, other than incomplete printouts that it provided that would give her current employer the authority to update the time balance. She asserts that since she has not been copied on the correspondence between DMAVA and her supervisor per the enforcement, she cannot rebut it.

Cardone presents that on June 15, 2020, which was after the settlement, she requested that DMAVA place her on the regular employment list. She explained that this would provide her the opportunity to be appointed to other State appointing authority’s in her former title or any other comparable title deemed appropriate by this agency. She notes that the list is only good for a three-year period commencing from the date of her resignation in good standing, which was January 18, 2019. Cardone asserts that while she understands that placement on the regular employment list is at the discretion of the appointing authority, she presents that DMAVA indicated that it refuses to do so to continue to sustain charges against her that were withdrawn in the settlement. Cardone claims that DMAVA has consistently acted in bad faith in complying with the terms of the settlement. She indicates that it took DMAVA eight months to send her a back pay check, which appears to her to be incorrectly calculated. Cardone states that DMAVA took no action to correct her leave balances or pay scale discrepancies. Instead, she had to resolve these issues with her current employer or through petitioning for enforcement. Therefore, she argues that DMAVA’s refusal to place her on the regular employment list is retaliatory. Additionally, Cardone requests copies of all correspondence regarding her that she was not copied on as she has no faith or trust that there were no derogatory comments made about her to her current employer. She also states that she received her W-2 and the taxes paid from the back pay are

¹ Cardone submits paperwork which appears to come from DMAVA’s payroll department. It indicates a gross awarded payment in the amount of \$9,380.28, base wages (subject to pension) in the amount of \$15,509.28, total deductions in the amount of \$4,068.15 and net pay in the amount of \$5,312.13.

² Personnel records indicate that Cardone is now a Senior Payroll Clerk with the New Lisbon Developmental Center.

³ Cardone submits from personnel records that as of December 31, 2018, she had 18.60 sick days (8.1 forwarded + 15.00 credited -4.5 used), 14.2 vacation days (1.4 forwarded – 20.00 credited less 7.1 used), and 1.7 administrative days (3.00 credited less 1.2 used),

not included. She asks if she is going to receive a new or corrected W-2 from DMAVA as she does not want to owe back taxes and she asks if she is going to receive the same from unemployment.

In response, DMAVA, represented by Paul D. Nieves, DAG, requests that this matter be closed as it states that it complied with the settlement agreement. It asserts that DMAVA has always acted in good faith. DMAVA states that there were several barriers to resolving this settlement. It presents that when Cardone was separated, it did not have access nor the ability to alter her personnel record, which complicated its ability to amend her service record to reflect the leave of absence and resignation in good standing with no break in service. Additionally, DMAVA states that her subsequent employment with the Department of Human Services (Human Services), which uses a different payroll system, created barriers to its ability to update and calculate her back pay as the two systems do not share data. Accordingly, it requested that this agency resolve this issue in the Personnel Management Information System (PMIS), which it confirmed that as of September 3, 2020, her PMIS history was completely updated per the settlement agreement and does not show a break in service. Further, on September 13, 2020, DMAVA informed Cardone that her personnel record in its system reflected no break in service with a separation date of December 31, 2018.

DMAVA suggests that a printout from its payroll records be provided to Human Services, which can make updates accordingly. It presents that its payroll records printout indicates that Cardone has 57 hours of sick time and was credited 105 sick hours and has a balance of 130.50 hours. Additionally, she was forwarded 10 hours of vacation time, credited 140 hours of vacation, and has a balance of 100 hours. Human Services can update her benefit details from 2019 and 2020.

DMAVA states that per the settlement agreement, Cardone was paid two months of back pay for the period of July 2, 2018 through September 2, 2018. She acknowledges that she received a settlement check on or about December 9, 2020 for a net amount of \$5,312.13. Cardone was provided a breakdown of the W-2 deductions totaling \$4,068.15. DMAVA indicates that the gross back pay amount was \$15,509.28 and she was paid unemployment benefits from July 7, 2018 to September 1, 2018 in the amount of \$6,129.00. Therefore, it presents that her total deductions for her W-2 and unemployment benefits mitigation equals \$10,197.15, which was subtracted from her gross pay to determine the net pay amount that was mailed to her. Therefore, it asserts that it satisfied the term of the settlement agreement.

DMAVA indicates that Cardone acknowledges that placement on a regular reemployment list is within the discretion of an appointing authority, and it asserts that a settlement does not limit this discretion. It presents that the document for placement on the regular reemployment list requires that DMAVA consider her past performance while it employed her. It notes that the settlement is silent on the issue

of reappointment. It highlights that an investigation was conducted by an employee outside of DMAVA's department, which led to charges of multiple counts of conduct unbecoming, falsification/misstatement of material fact in the record as well as a violation of the Uniform Ethics Code. Therefore, DMAVA considers Cardone's behavior as a serious lapse of judgment that is inconsistent with the values and conduct expected of an employee in her prior title. Since DMAVA does not agree that it would be in "the interest of Government service," to reappoint her to her former title, as it needed to indicate on the form, it properly denied her request.

CONCLUSION

N.J.A.C. 4A:10-2.1(a) provides that where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, the Commission shall conduct an investigatory hearing or other review, as appropriate. If a violation or noncompliance is found, the Commission may:

1. Issue an order of compliance;
2. Assess costs, charges, and fines not to exceed \$ 10,000;
3. Order the appointment of an eligible from an outstanding list;
4. In State service, consolidate personnel functions;
5. Initiate a civil action in the Superior Court;
6. Recommend criminal prosecution; or
7. Take other appropriate action pursuant to law or rule.

N.J.A.C. 4A:4-7.10(b) provides that upon recommendation of the appointing authority that that such reemployment is in the best interest of the service, the Chairperson or designee shall place the employee's name on a reemployment list.

N.J.A.C. 4A:2-1.4(c) provides that the burden of proof shall be on the appellant.

In this matter, while a review of the record indicates that there may have been some delay in DMAVA's ability to comply with the settlement agreement; there is nothing in the record that indicates that it has not acted in good faith or in non-compliance.

Cardone presents that she initially indicated that she had not received the agreed upon back pay, and when she did, the amount was lower than the gross amount less standard payroll deductions. Therefore, she requests an explanation. In response, DMAVA explains that the net amount of back pay was based on the gross amount for the back pay period less her payroll deductions less her mitigation from unemployment benefits received. As this is consistent with the terms of the settlement agreement and how back pay awards are determined under *N.J.A.C.* 4A:2-2.10, the Commission finds that DMAVA is in compliance in determining her back

pay award. Further, as she has received her back pay award check, DMAVA is also in compliance in providing her award.

Additionally, Cardone complains that her service record was not adjusted to reflect the leave of absence and the resignation in good standing with no break in service as agreed upon. In response, DMAVA states that its payroll system is different than her current employer's system. Therefore, it did not have access nor the ability to alter her personnel record, which complicated its ability to amend her service record to reflect the leave of absence and resignation in good standing with no break in service. However, it indicates that it worked with this agency, and her PMIS record and its personnel records now have been updated to reflect no break in service with a separation date of December 31, 2018. Therefore, the Commission finds that DMAVA complied and updated her personnel records. Further, concerning her sick and vacation balance updates, DMAVA has provided a printout from its payroll records, which can be provided to Human Services, which can make updates accordingly. It is unclear as to why this is not sufficient for Human Services to update her records. To the extent that Human Services needs something else, its human resources department can communicate with DMAVA's human resources; however, there is no evidence that DMAVA has been non-compliant in this regard.

Regarding Cardone's statement that she has no proof or written documentation that the repayment of unemployment has been satisfied nor has she been provided appeal rights regarding this; the record indicates that the State's Unemployment Compensation Law requires that the State be reimbursed for benefits to be paid to individuals who are subsequently awarded back pay and that the appointing authority can deduct the amount owed from the back pay award and reimburse the State. Therefore, Cardone can follow-up with the Department of Labor and Workforce Development concerning any documentation and appeal rights with regards to this payment, and there is no evidence in the record that DMAVA is non-compliant concerning this issue. In reference, to Cardone's request for all copies of correspondence between DMAVA and Human Services, as there is no evidence in the record that DMAVA has made derogatory statements to Human Services about her, this request is denied. Regardless, the Commission can find no reason as to why any such purported documents would have any bearing on the enforcement of the settlement. Relating to her need for a corrected W-2 from DMAVA, the record is unclear if one is needed, but per the extent that one is, DMAVA is directed to provide her one. Any request for a corrected W-2 from unemployment should be directed to the Department of Labor and Workforce Development and is outside the scope of this decision.

Finally, regarding Cardone's request that DMAVA submit her application for the regular reemployment list so that she could be potentially be appointed to a position in her prior title, the application provides that the appointing must certify that reemployment of the application at the applicant's former regular title, or any

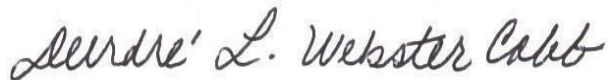
comparable title would be “in the best interests of Government Service.” The appointing authority explains why it does not believe Cardone’s reemployment in her former title would be in the best interest of government service. There is no evidence in the record that this assessment by the appointing authority is not a genuine belief, and therefore, it was not obligated to certify to a statement that it does not believe is true. Further, a review of the settlement agreement does not indicate that DMAVA agreed that Cardone did not engage in the behavior that led to administrative charges or that it would support any application for regular reemployment. If Cardone wanted complete exoneration for the allegations, she should not have agreed to a settlement that did not completely exonerate her and she should have further pursued her appeal. Moreover, even if she were fully exonerated in the settlement, DMAVA, absent an explicit statement in the settlement to the contrary, would not have been required to agree to her request to be placed on the regular reemployment list as such placement is wholly at the discretion of the appointing authority and would not otherwise be subject to review by the Commission.

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 3RD DAY OF MARCH, 2021



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