

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROSANNA BOYD,)
)
 Petitioner,)
)
 vs.) Case No. 03-4286
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This cause came on for formal hearing before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearing, on February 16, 2004, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Rosanna Boyd, pro se
Apartment 162
3400 Townsend Boulevard
Jacksonville, Florida 32277

For Respondent: Robin Whipple-Hunter, Esquire
Department of Children and Family Services
Post Office Box 2417
Jacksonville, Florida 32231-0083

STATEMENT OF THE ISSUE

The issue is whether the Petitioner, a former employee of the Respondent, was overpaid in the amount of \$1,165.76, and should be required to repay that amount to the Respondent.

PRELIMINARY STATEMENT

By certified letter dated August 26, 2003, the Respondent attempted to notify the Petitioner that she had been overpaid by the Respondent in the amount of \$1,266.19. The Respondent sent a second certified letter entitled "Second/Final Notice of Salary Overpayment" to the Petitioner on October 14, 2003, demanding payment in the amount of \$1,266.19. The Petitioner challenged the Respondent's demand for payment by an undated letter received by the Respondent on October 31, 2003, and requested a formal administrative hearing. The Respondent transmitted the case to the Division of Administrative Hearings on November 14, 2003. The hearing was held as scheduled on February 16, 2004.

At the hearing, the Respondent provided the Petitioner with an Amended Second Final Notice that advised the Petitioner that, after further review, the Respondent had determined that the Petitioner actually owed the Respondent \$1,165.76, rather than the \$1,266.19 previously believed by the Respondent to be owed by the Petitioner.

The Petitioner was not represented by legal counsel and testified on her own behalf. The Respondent called one witness, Ms. Ernestine Moody-Robinson, the Human Resources Manager for Respondent, and offered 12 exhibits, all of which were admitted into evidence. The Respondent requested and was granted

official recognition of specific portions of the Florida Statutes.

A transcript was not ordered. After the hearing, the Petitioner did not submit a proposed recommended order. The Respondent filed Proposed Findings of Fact and Conclusions of Law on March 2, 2004.

References to statutes are to Florida Statutes (2003) unless otherwise noted.

FINDINGS OF FACT

1. The Petitioner was a career service employee of the Respondent and was initially employed on November 17, 1997.

2. The Petitioner's employment with the Respondent was terminated on June 30, 2003, due to layoffs created by the outsourcing of the Family Services Unit of the Respondent.

3. The Petitioner's annual rate of pay at the time of her termination was \$19,797.44, paid bi-weekly.

4. By letters dated August 26, 2003, October 14, 2003, and February 16, 2004, the Petitioner was informed that six separate salary overpayments had occurred.

5. The Petitioner actually worked 56 hours during the pay period of June 20, 2003 through July 3, 2003, but was inadvertently paid for 80 hours of work. The Petitioner was inadvertently paid for working the days of July 1, 2, and 3, 2003, although her employment had been terminated effective

June 30, 2003. The overpayment was for 24 hours, amounting to \$183.79, based upon the Petitioner's annual rate of pay.

6. The Petitioner was no longer employed by the Respondent during the pay period of July 4, 2003 through July 17, 2003, but was inadvertently paid for 80 hours of work. The overpayment amounted to \$601.70, based upon the Petitioner's annual rate of pay.

7. Following termination of employment, the Respondent's Human Resources Department conducted an audit of the terminated employee's leave. An audit was performed by the Respondent concerning the Petitioner's leave.

8. In the course and scope of the Respondent performing the audit of the Petitioner's leave, the Respondent discovered that the Petitioner had been overpaid for four pay periods in 2003.

9. Once an employee of the Respondent no longer has sick leave remaining, annual leave is used to cover any shortages in sick leave.

10. Once an employee of the Respondent no longer has either sick leave or annual leave remaining, the employee cannot be paid for additional time taken as leave. The additional time becomes "leave without pay."

11. The Petitioner was overpaid in four separate pay periods when she had insufficient sick or annual leave as follows:

1/31/03-2/13/03: 16.50 hours
4/11/03-4/24/03: 22.75 hours
4/25/03-5/08/03: 4.25 hours
5/23/03-6/05/03: 4.75 hours

The sum of the hours of overpayment is 48.25, which translates to the amount of \$380.27 in overpayment to the Petitioner for the referenced pay periods.

12. The total amount of the Respondent's overpayment to the Petitioner, based upon the salary payments for July 1, 2, and 3, 2003, July 4 through 17, 2003, and the four pay periods in which the Petitioner was overpaid when her sick and annual leave had run out is \$183.79 plus \$601.70 plus \$380.27, which totals \$1,165.76.

13. The Petitioner was not at fault for the overpayment. She did not falsify her leave reports or timesheets, nor was she accused by the Respondent of having done so.

14. The Petitioner believed that the pay she received for July 4, 2003 through July 17, 2003, was severance pay since she had been terminated when her position had been eliminated.

15. The Respondent does not issue severance pay to terminated employees.

16. The Petitioner believes that some of the leave she had taken during the four pay periods when her sick and annual leave had run out should have been considered administrative leave which, according to the Respondent, was offered to employees in the Family Services Unit who were facing termination as an aid to finding new jobs.

17. Administrative leave was available to employees whose positions were being eliminated to allow them to use the Internet while at the office to search for jobs, and to leave the office for interviews or any testing required for re-employment.

18. The Petitioner failed to document leave time, if any, during the pay periods at issue in this proceeding, that she took for purposes of job testing or interviews.

19. The Petitioner failed to properly designate administrative leave on the automated leave system, Time Direct, for the pay periods at issue in this proceeding, even though, as a secretary specialist for the Respondent for seven years, her duties included keeping track of leave for the people in her work unit.

20. The Respondent offered several of the Petitioner's timesheets that reflect the Petitioner's having taken administrative leave on more than 30 occasions from October 2002 through May 2003. These time entries for administrative leave

include time during each of the four pay periods at issue in this proceeding, January 31, 2003 through February 13, 2003, April 11, 2003 through April 24, 2003, April 25, 2003 through May 8, 2003, and May 23, 2003 through June 5, 2003.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat.

22. Section 17.04, Florida Statutes, grants the Chief Financial Officer the authority to "examine, audit, adjust and settle" the accounts of all state employees; to require such persons to "render full accounts thereof"; and to "yield up such property or funds according to law."

23. The Department of Management Services, pursuant to Section 110.2035(6), Florida Statutes, has the duty to "establish and maintain an equitable pay plan applicable to all occupations and shall be responsible for the overall review, coordination, and administration of the pay plan."

24. "Each agency shall keep an accurate record of all hours of work performed by each employee, as well as a complete and accurate record of all authorized leave which is approved." § 110.219(4), Fla. Stat.

25. The Petitioner, as the moving party in this proceeding, has the burden of proving its case by a

preponderance of the evidence. § 120.57(1)(j), Fla. Stat.; Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

26. The Respondent has a duty to ensure that accurate records are maintained and that each employee is paid equitably for work performed. The Respondent conducted an audit of the Petitioner's last paycheck, as well as payroll records for several pay periods while the Petitioner was still employed with the Department of Children and Family Services. Under the first audit, the Respondent claimed an overpayment in the amount of \$1,266.19. Upon a re-audit, the Respondent reduced the overpayment to \$1,165.76. The preponderance of the evidence shows that the second audit is correct and the Petitioner was overpaid for non-compensable sick and annual leave, as well as for time beyond the date of the Petitioner's termination from employment in the amount of \$1,165.76.

27. The Petitioner has wholly failed to offer any evidence, let alone a preponderance of the evidence to support her position that she is entitled to keep the funds that were overpaid or mistakenly paid by the Respondent to her. The Petitioner presented no evidence to support her claim that the time for which she was compensated while still employed by the Respondent should have been classified as administrative leave and therefore not charged against her sick or annual leave. In

fact, the Respondent presented convincing evidence that the Petitioner had been paid for a significant amount of administrative leave during the pay periods in question. Further, the Petitioner failed to produce any evidence that she was entitled to continue to receive pay once her position had been terminated. She was unable to produce any basis for receiving severance pay or additional compensation due to her position having been outsourced by the Respondent.

28. Finally, the Petitioner has produced no evidence to support her position that she should be exempt from the requirement that any funds overpaid by the State of Florida should not be repaid. The Petitioner has produced no such evidence and no legal basis exists for her claim that she should be entitled to the money because it was not her fault that she was mistakenly paid for hours of leave she did not have and for 17 days after her employment had been terminated. Accordingly, the Petitioner's claim for relief must fail.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Respondent enter a Final Order requiring the Petitioner to repay the Respondent \$1,165.76.

DONE AND ENTERED this 5th day of March, 2004, in
Tallahassee, Leon County, Florida.

S

ROBERT S. COHEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.