

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LILLIAN ANDERSON,)
)
 Petitioner,)
)
 vs.) Case No. 09-5433
)
 DEPARTMENT OF JUVENILE JUSTICE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 15, 2009, by video teleconference, with the parties appearing in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Lillian Anderson, pro se
3617 Carambola Circle North
Coconut, Florida 33066

For Respondent: Kimberly Sisko Ward, Esquire
Department of Juvenile Justice
2737 Centerview Drive
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether the Petitioner received a salary overpayment from the Respondent for leave usage to which she was not entitled, as set forth in amended correspondence dated October 2, 2009, and, if so, the amount of any overpayment.

PRELIMINARY STATEMENT

In amended correspondence dated October 2, 2009, the Department of Juvenile Justice ("Department") notified Lillian C. Anderson that it had overpaid her salary for the pay period ending February 19, 2009, by 8 hours, or \$76.18. The Department attributed the overpayment to Ms. Anderson's use of leave to which she was not entitled. According to the letter, Ms. Anderson owed the Department \$66.65, the balance of the overpayment after one hour's annual leave was credited to her. Ms. Anderson timely requested a formal administrative hearing, and the Department transmitted the matter to the Division of Administrative Hearings for the assignment of an administrative law judge. Pursuant to notice, the final hearing was held on December 15, 2009.

At the hearing, the Department presented the testimony of Chiquita Mordica and Vivian Chambliss, and Respondent's Exhibits 1 through 13 were offered and received into evidence. Ms. Anderson testified in her own behalf and presented the

testimony of Vershawn Berry; Petitioner's Exhibit 1 was offered and received into evidence.

No transcript of the proceedings was filed. Ms. Anderson timely submitted her Statement of Position, and the Department timely submitted proposed findings of fact and conclusions of law. Both submittals have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. Ms. Anderson was employed by the Department as a full-time Career Service employee until her separation on August 11, 2009. She had one year and four months' service with the State of Florida.

2. As an employee of the Department, Ms. Anderson was paid biweekly. Based on her years of service, Ms. Anderson accrued four hours of annual leave and four hours of sick leave each biweekly pay period.

3. Ms. Anderson used the People First System to complete her timesheets, request approval of leave, and review her leave balances.

4. At issue is the amount of annual and sick leave used by Ms. Anderson during the pay period beginning February 6, 2009

and ending February 19, 2009. Ms. Anderson entered her time in the computerized People First timesheet as follows:

February 6, 2009	8 hours' worked
February 9, 2009	8 hours' sick leave
February 10, 2009	8 hours' sick leave
February 11, 2009	3.25 hours' sick leave 4.75 hours' annual leave
February 12, 2009	8 hours' personal holiday
February 13, 2009	8 hours' annual leave
February 16, 2009	7.25 hours' annual leave
February 17, 2009	8 hours' worked
February 18, 2009	8.75 hours' worked
February 19, 2009	4 hours' sick leave 4 hours' annual leave

5. The Pay Period Overview in the People First System for the pertinent time period reflected the following:

Beginning balance 2/06/09:	0 hours' annual leave 0 hours' sick leave 0 hours' personal holiday
Accrual 2/19/09:	4 hours' annual leave 4 hours' sick leave 0 hours' personal holiday
Used N/A :	(24.00) hours' annual leave (23.25) hours' sick leave 0 hours' personal holiday
Ending Balance 2/19/09:	0 hours' annual leave 0 hours' sick leave 0 hours' personal holiday

6. The Department's Policies and Procedures for Attendance and Leave provides in pertinent part:

III. Standards and Procedures

* * *

D. Annual Leave

Method of Earning Annual Leave

* * *

Bureau of Personnel

1. Annual leave earned during any period shall be credited to the employee on the last day of that pay period or, in the case of separation, on the last day the employee is on the payroll.

* * *

Use of Earned Annual Leave

Employee

1. Use of annual leave shall not be authorized prior to the time it is earned and credited and shall only be used with the prior approval of the proper authority.

* * *

E. Sick Leave

Method of Earning Sick Leave

* * *

Employee

* * *

4. Sick leave earned during any pay period shall be credited to the employee on the

last day of that pay period, or in the case of separation, on the last day the employee is on the payroll.

* * *

Use of Earned Sick Leave

Employee

1. Use of sick leave shall not be authorized prior to the time it is earned and credited to the employee and shall only be used with the approval of the proper authority.

7. The Department keeps an official record of an employee's leave balances and accruals for each pay period, and it conducts audits of an employee's leave upon separation. The Department performed an audit of Ms. Anderson's leave and created an Employee Leave Record setting out annual and sick leave earned and used by Ms. Anderson up to her date of separation in August 2009.

8. The audit revealed that Ms. Anderson had 20 hours of annual leave and 19.25 of sick leave available as of January 6, 2009, and that she accrued 4 hours of annual leave and 4 hours of sick leave on February 19, 2009, which could be used beginning February 20, 2009.

9. As shown on the People's First timesheet prepared by Ms. Anderson and set out above, Ms. Anderson used 24 hours of annual leave and 23.25 hours of sick leave during the pay period beginning February 6, 2009, and ending February 19, 2009.

Ms. Anderson, therefore, used four hours of annual leave and four hours of sick leave to which she was not entitled during the pay period extending from February 6, 2009, to February 19, 2009, and she was paid for these hours in the salary warrant issued February 27, 2009.

10. In calculating the amount of the salary overpayment to Ms. Anderson, the Department made allowance for the one hour's annual leave balance Ms. Anderson had when she separated from the Department. The Department, therefore, calculated the salary overpayment based on seven non-compensable hours, and the balance owed by Ms. Anderson to the Department for the salary overpayment is \$66.65.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

12. The Department seeks to recover a salary overpayment from Ms. Anderson. Because this is not a penal or disciplinary matter, the Department has the burden of proving by a preponderance of the evidence that Ms. Anderson received a salary overpayment. See § 120.57(1)(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except

as otherwise provided by statute"); Florida Department of Transportation v. J.W.C. Co., Inc., 396 So.2d 778, 788 (Fla. 1st DCA 1981)("In accordance with the general rule, applicable in court proceedings, 'the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.' Balino v. Department of Health and Rehabilitative Services, 348 So.2d 349 (Fla. 1st DCA 1977).").

13. Section 110.219, Florida Statutes (2008), which addresses attendance and leave for state employees, provides in pertinent part:

4) 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. The ultimate responsibility for the accuracy and proper maintenance of all attendance and leave records shall be with the agency head.

(5) Rules shall be adopted by the department [of Management Services] in cooperation and consultation with the agencies to implement the provisions of this section; however, such rules must be approved by the Administration Commission prior to their adoption. Such rules must provide for, but need not be limited to:

* * *

(e) Annual leave provisions.

(f) Sick leave provisions.

14. In accordance with the statutory directive in Section 110.219(5), the Department of Management Services

adopted Florida Administrative Code Rule 60L-34.004, General Requirements for Leave Earning, Approval, and Use, which provides in pertinent part:

(5) The use of paid leave shall not be authorized and taken before the time it is earned.

(6) For career service employees, leave shall be credited to the employee at the close of business on the last day of the pay period, or, in the case of separation, on the last day the employee is on the payroll. For senior management service and selected exempt service employees, leave shall be credited upon the first appointment to either of the pay plans and upon the annual anniversary date of that first appointment.

(Emphasis added.)

15. Based on the findings of fact herein, the Department has proven by a preponderance of the evidence that Ms. Anderson was paid for four hours of annual leave and four hours of sick leave which she was not entitled to use during the February 6, 2009 to February 19, 2009, pay period.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Juvenile Justice enter a final order requiring Lillian Anderson to remit to the Department of Juvenile Justice the amount of \$66.65.

DONE AND ENTERED this 19th day of February, 2010, in
Tallahassee, Leon County, Florida.



PATRICIA M. HART
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of February, 2010.

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.