

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ILEANA TOLEDO,

Petitioner,

vs.

Case No. 13-3708

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

NORMA PEDRAZA,

Petitioner,

vs.

Case No. 13-3709

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

LIL GUERRERO,

Petitioner,

vs.

Case No. 13-3710

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

RECOMMENDED ORDER

These cases came before Administrative Law Judge Darren A. Schwartz for final hearing by video teleconference on October 21, 2013, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioners: Ileana Toledo, pro se
371 Northwest 59th Avenue
Miami, Florida 33126-3734

Norma I. Pedraza, pro se
20727 Southwest 105th Avenue
Miami, Florida 33189-3658

Lil Guerrero, pro se
12316 Southwest Tenth Lane
Miami, Florida 33184-2445

For Respondent: Hilda A. Fluriach, Esquire
William Crowe, Esquire
Suite S-811
Agency for Persons with Disabilities
401 Northwest Second Avenue
Miami, Florida 33128

STATEMENT OF THE ISSUE

Whether Petitioners received salary overpayments from the Agency for Persons with Disabilities.

PRELIMINARY STATEMENT

By letter dated August 14, 2013, Respondent, Agency for Persons with Disabilities ("Respondent"), advised Petitioner Ileana Toledo that due to an administrative coding error, a salary overpayment totaling \$464.63 was made during a period of Petitioner's employment with Respondent. By letter dated August 14, 2013, Respondent advised Petitioner Norma Pedraza that due to an administrative coding error, a salary overpayment totaling \$624.14 was made during a period of Petitioner's employment with Respondent. By letter dated August 14, 2013,

Respondent advised Petitioner Lil Guerrero that due to an administrative coding error, a salary overpayment totaling \$426.65 was made during a period of Petitioner's employment with Respondent. Respondent requested repayment of the above amounts from Petitioners, and Petitioners were advised of their right to dispute the overpayments and request a hearing.

Petitioners requested a hearing, and on September 25, 2013, the matters were forwarded to the Division of Administrative Hearings. Case No. 13-3709 was initially assigned to Administrative Law Judge Mary Li Creasy. Case No. 13-3710 was initially assigned to Administrative Law Judge Robert E. Meale. In their responses to the initial orders, Petitioners requested that these cases be consolidated for further handling. On October 1, 2013, the undersigned entered an Order consolidating these matters. The hearing was set for October 21, 2013, by video teleconference, with sites in Tallahassee and Miami, Florida.

At hearing, Petitioners testified on their own behalf, and offered four exhibits into evidence. None of Petitioners' proposed exhibits were provided to the undersigned prior to the hearing as required by the Notice of Hearing. Petitioners' exhibits were not sent to and received by Respondent's counsel until Friday, October 18, 2013, via email.

Nevertheless, Petitioners' Exhibits 1 and 2, each of which consisted of two pages of handwritten notes authored by Respondent's employees, were admitted into evidence without objection. Petitioners' Exhibit 3, which consisted of an email dated April 30, 2013, from Maria Springer to Carolyn Hunter and Niurka Romero, was admitted into evidence without objection. Petitioners' Exhibit 4, which consisted of an email dated May 29, 2013, from Maria Springer to Carolyn Hunter and other employees of Respondent, was admitted into evidence without objection. However, an additional email contained within Exhibit 4 was not admitted.^{1/}

The undersigned granted Respondent's request for official recognition of Florida Administrative Code Rule 60L-34 and chapter 110, Florida Statutes (2013). Respondent presented the testimony of Dale Sullivan, Maria Springer, Niurka Romero, and Carolyn Hunter, and offered Exhibits 1-3, all of which were admitted into evidence without objection.

The Transcript of the final hearing was filed electronically on November 7, 2013. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, Petitioners Ileana Toledo, Norma Pedraza, and Lil Guerrero have been career service employees of Respondent.

2. The Department of Management Services ("DMS") has a classification and pay system that is used by Respondent, and DMS is responsible for designating employment positions within Respondent. A position is either included for overtime pay or excluded from overtime pay. At issue is whether Petitioners erroneously received monetary compensation for overtime hours worked after their position was reclassified from an included career service position to an excluded career service position.

3. Prior to March 28, 2013, Petitioners held the position of Human Services Counselor III, which was designated by DMS as an included career service position. On March 26, 2013, Respondent proposed to reclassify Petitioners' position from Human Services Counselor III to Human Service Program Analyst, which is designated by DMS as an excluded career service position. The proposed reclassification resulted from a reorganization of Respondent's regional offices, and an effort by Respondent to standardize its functions, services, and types of positions in its regional offices.

4. In a letter dated March 26, 2013, Petitioners were advised by Respondent's Human Resources Director, Dale Sullivan,

that if they accepted an offer to reclassify their position from Human Services Counselor III to Human Service Program Analyst, their "current status and salary will remain unchanged."

5. Notably, the March 26, 2013, letter makes no specific mention of overtime. On March 28, 2013, Petitioners accepted Respondent's offer of employment to reclassify their position from Human Services Counselor III to Human Service Program Analyst.

6. Typically, employees of Respondent who are appointed to new positions are placed in probationary status, as opposed to permanent status, and are required to review and execute new position descriptions. However, the reclassification of Petitioners' position by Respondent was not typical.

7. As part of the reclassification of Petitioners' position to Human Service Program Analyst, Respondent provided Petitioners with a new position description. However, Petitioners' job duties, salaries, and permanent status remained the same as they had been in their prior position of Human Services Counselor III.

8. Petitioners read and acknowledged their receipt of the new position description on March 28, 2013. On the first page of the position description, there is a heading titled "Position Attributes". Under this heading, the term "Overtime" is shown, followed by two boxes, "Yes" and "No." The "No" box is marked,

indicating that Petitioners are not eligible to work overtime hours.

9. The position description further indicates that Petitioners would be career service employees. However, the position description does not specifically include the terms included or excluded.

10. Prior to the reclassification, Petitioners were paid bi-weekly based on an 80-hour pay period. If they worked more than 80 hours in a pay period, they received additional monetary compensation for their overtime hours. Payment for Petitioners' regular and overtime work hours was based on employee timesheets submitted to the People First leave and payroll system.

11. After the reclassification of their position, Petitioners continued to work overtime in excess of their bi-weekly contractual hours, despite the prohibition in the position description. Petitioners were required to obtain approval by their supervisors before being allowed to work overtime. Petitioners' overtime was approved by their supervisors after the reclassification despite the prohibition on working overtime hours as indicated in the position description.

12. During the pay periods of March 29-April 11, 2013; April 26-May 9, 2013; and May 10-June 23, 2013, Petitioner Ileana Toledo worked a total of 28 hours of overtime, and received

monetary compensation in the amount of \$464.63 from Respondent for these overtime hours.

13. For the pay periods of March 29-April 11, 2013; April 12-April 25, 2013; April 26-May 9, 2013; and May 10-May 23, 2013, Petitioner Norma Pedraza worked a total of 32.25 hours of overtime, and received monetary compensation in the amount of \$624.14 from Respondent for these overtime hours.

14. For the pay periods of March 29-April 11, 2013; April 12-April 25, 2013; April 26-May 9, 2013; and May 10-May 23, 2013, Petitioner Lil Guerrero worked a total of 25.50 hours of overtime, and received monetary compensation in the amount of \$426.65 from Respondent for these overtime hours.

15. Respondent's payment of monetary compensation to Petitioners for the overtime hours worked after the reclassification of their position to Human Service Program Analyst occurred due to an administrative coding error, thereby resulting in the overpayment of monetary compensation to Petitioners by Respondent in the amounts the Respondent seeks to recover from Petitioners. The administrative coding error occurred because of Respondent's failure to note the change from included to excluded on the People First system following the reclassification of Petitioners' position. The error occurred due to an honest mistake, and resulted in the overpayments at issue.

16. Petitioners should not have received monetary compensation for their overtime hours in the Human Service Program Analyst position because a Human Service Program Analyst position is an excluded career service position.

17. An excluded career service employee must earn and receive regular compensation leave credits for overtime work, but cannot receive monetary compensation for overtime work. On the other hand, included career service employees, such as those persons in Petitioners' previous position of Human Services Counselor III, must receive monetary compensation for overtime hours worked, rather than regular compensatory leave credits.

18. Neither Petitioners nor their supervisors were aware at the time that the overpayments were made that Petitioners could not receive monetary compensation for their overtime hours, but must instead receive regular compensatory leave credits.

19. At hearing, Petitioners did not dispute the amounts and hours of overtime worked as set forth in paragraphs 12-14 above.

20. In accordance with the Department of Management Services' Bureau of Payroll Manual, the amount of salary overpaid, and the amount sought to be repaid, was calculated as set forth in paragraphs 12-14 above.

21. When an agency has determined that a salary overpayment has occurred, it is required to follow procedures set forth in the above-referenced manual, to seek repayment. Respondent

followed those procedures in making the calculations relevant in this case.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

23. A state employee who disputes that he or she has been overpaid in the amount claimed by the employing agency is entitled to a section 120.57 hearing before any final action is taken. Dep't. of Corr. v. Career Serv. Comm., 429 So. 2d 1244, 1246 (Fla. 1st DCA 1983). As the party seeking recovery of salary overpayments, Respondent has the burden of proving by a preponderance of the evidence that Petitioners received salary overpayments. Florida Dep't. of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

24. DMS has established a classification and compensation program for career service positions. "If an agency requires an excluded career service employee to work hours in excess of the regular work period or an approved extended work period, the employee shall, with agency approval, earn regular compensatory leave credits on an hour-for-hour basis" Fla. Admin. Code. R. 60L-34.0043 (emphasis added).

25. The evidence at hearing clearly shows that after the reclassification of their position to Human Service Program Analyst, Petitioners were classified as excluded career service employees, worked overtime, and received monetary compensation for their overtime hours for which they were not entitled. Instead of receiving monetary compensation for their overtime hours, Petitioners were entitled to receive regular compensatory leave credits on an hour-for-hour basis pursuant to Florida Administrative Code Rule 60L-34.0043.

26. As a result of the monetary compensation paid to Petitioners for their overtime hours following the reclassification of their position to Human Service Program Analyst, Petitioners were overpaid salary. The overpayment occurred as a result of an honest mistake resulting from an administrative coding error. As set forth above, there is no dispute as to the amount of monetary compensation paid to Petitioners for the overtime hours they worked. Nor is there any dispute as to the number of overtime hours worked.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered by the Agency for Persons with Disabilities determining that: 1) Petitioner Ileana Toledo was erroneously paid salary in the amount of \$464.63; 2) Petitioner Norma Pedraza was erroneously

paid salary in the amount of \$624.13; 3) Petitioner Lil Guerrero was erroneously paid salary in the amount of \$426.65; and 4) Petitioners are entitled to be compensated by Respondent through compensatory leave credits for the overtime hours worked as reflected in paragraphs 12-14 above.

DONE AND ENTERED this 25th day of November, 2013, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of November, 2013.

ENDNOTE

^{1/} Petitioners' exhibits were late-filed with the Division of Administrative Hearings on October 22, 2013.

COPIES FURNISHED:

Juan Ricardo Collins, Esquire
Agency for Persons with Disabilities
Suite 380
4030 Esplanade Way
Tallahassee, Florida 32399

Hilda Fluriach, Esquire
Agency for Persons with Disabilities
Room South 811
401 Northwest Second Avenue
Miami, Florida 33128

Illeana Toledo
371 Northwest 59th Avenue
Miami, Florida 33126-3734

Norma I. Pedraza
20727 Southwest 105th Avenue
Miami, Florida 33189-3658

Lil Guerrero
12316 Southwest Tenth Lane
Miami, Florida 33184-2445

Jamie Morrow, Agency Clerk
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950

Richard D. Tritschler, General Counsel
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950

Barbara Palmer, Executive Director
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950

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.