

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARY JANE WILLIAMS,

Petitioner,

vs.

Case No. 14-3895

DEPARTMENT OF HEALTH,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on September 29, 2014, by video teleconference, with the parties appearing in Gainesville, Florida, before June C. McKinney, a duly-designated administrative law judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Mary Jane Williams, pro se
1922 Northwest 113th Drive
Gainesville, Florida 32606

For Respondent: Mark Henderson, Esquire
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner was overpaid in the amount of \$1,022.45 and should be required to repay that amount to the Department of Health.

PRELIMINARY STATEMENT

In a certified letter dated July 3, 2014, Florida Department of Health ("Respondent" or "Department") notified Mary Jane Williams ("Petitioner" or "Williams"), a former Department employee, that she owed \$1,022.45 because she had received salary overpayments. By letter dated August 8, 2014, Petitioner challenged the Department's proposed action in an amended petition and requested an administrative hearing. The matter was transferred by the Respondent on August 19, 2014, to the Division of Administrative Hearings for assignment of an administrative law judge.

The hearing was held on September 29, 2014. At the hearing, Petitioner testified on her own behalf and called no witnesses. Petitioner did not present any exhibits.

Respondent presented the testimony of two witnesses: Katie Williams and Penny Zoda. Respondent's Exhibits numbered 1 through 7, and 9 were received into evidence.

The proceedings were not transcribed. The parties were given 10 days from the date of the hearing to file proposed recommended orders. Both parties timely filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner was a career-service employee of Respondent and was initially employed with the Department from October 14, 2005, until January 20, 2007.

2. In February 2007 Petitioner received a cash payout for her annual leave balance of 3.25 hours in the amount of \$67.18.

3. In January 2007 when Petitioner terminated her employment with the Department, the state's timekeeping system, People's First, was not set up to automatically zero out leave balances for employees. The Department's human resource office was responsible to manually adjust the leave balance to zero each time an employee left employment with the Department.

4. The Department's human resource office failed to zero out Petitioner's leave when she left.

5. On March 6, 2009, Petitioner became re-employed with the Department at a remote high school as a nurse. The People's First system credited Petitioner leave balances she was not entitled to upon re-employment with the Department because her previous leave balances had not been adjusted to zero.

6. Upon Petitioner's re-employment, the People's First system reflected incorrect leave balances in the amount of 3.25 hours accrued annual leave, and 107.75 hours of accrued sick leave.

7. Petitioner noticed a leave balance when she returned to work for the Department and asked her supervisor about the hours. Petitioner's supervisor provided her with incorrect information, which was, because she returned to the State within five years Petitioner was able to keep the time she had accumulated.

8. Petitioner followed up with the Department's personnel officer, Karen Cayson ("Cayson"), to see if the policy was true and Cayson confirmed that it was correct.

9. During Petitioner's last two pay periods prior to her second separation from employment with the Department, Petitioner took leave and used the unearned leave amount People's First indicated she had. Petitioner was paid salary for 34.50 hours of leave for the May 30, 2014, warrant date and 37.50 hours of leave for the June 13, 2014, warrant date.

10. When Petitioner took the 34.50 and 37.50 hours of leave, it should have been leave without pay had the Department's Human Resource section properly accounted for her leave to ensure it was at a zero balance when she left the Department in 2007.

11. Petitioner worked for the Department until May 30, 2014.

12. After Petitioner left, the Department conducted a payroll and leave audit. Katie Williams ("Williams") did an

official attendance audit by pulling all of Petitioner's leave and historical data.

13. Williams completed the audit and discovered Petitioner had been overpaid \$509.61 for the warrant date May 30, 2014, and overpaid \$566.65 for the warrant date June 13, 2014.

14. The Petitioner did not become aware of the overpayment until the Department requested repayment by letter.

15. On July 3, 2014, the Department sent Petitioner a certified letter requesting the overpaid amount of \$1,022.45, in which the Petitioner timely contested the letter.

16. Petitioner did her best to determine and verify that she was entitled to the leave money and was assured the amount was correct by Department employees. Petitioner took leave relying upon the assurance that her leave balance credit was correct.

17. Petitioner's sole income is from her monthly \$1,195.00 social security check. She does not have the money to pay the overpayment.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014).

19. The party seeking to prove the affirmative of an issue has the burden of proof. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981). Hence, the Petitioner has the burden of proof in this matter.

20. The party seeking to prove this type of case must do so by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

21. In this matter, the legislature has set forth the parameters for overpayment made in error by the Department. Section 110.1165 provides:

Executive branch personnel errors; limitation of actions for compensation.—
(1) An agency of the executive branch, including the State University System, shall establish procedures for the receipt, consideration, and disposition of a claim regarding pay or benefits brought by an employee when that employee is damaged as a result of being provided with erroneous written information by the employing agency regarding his or her pay or benefits, and the employee detrimentally relies upon such written information. In order to qualify for the relief provided by this section, the employee's reliance on the representation must have been reasonable and based only upon the written representations made by those persons authorized by the agency head to make such representations. Furthermore, the erroneous calculation and payment of an employee's salary, wages, or benefits is not among the written representations which will trigger relief under this section.

22. It is clear in this case that the Department did not meet its responsibility to manually zero out Petitioner's leave

balance when she left the first time and the Department created the unearned leave balance amount. However, the above quoted statute only allows for a claim if the employee has been provided with erroneous written information, upon which the employee relies. The record in this matter is void of any evidence to show that Petitioner was provided any "written representations" regarding her leave. Accordingly, Petitioner fails to qualify for relief under the law. Therefore, Petitioner owes the Department \$1,022.45.

23. Petitioner has indicated that the rate requested for repayment is too high, given her limited, fixed income. The undersigned finds that the Petitioner shall repay the amount owed to the Department at a rate of \$10.00 per month until it is paid off. While the amount is minimal, it would seem that the Department would show forbearance in seeking repayment and accommodate the Petitioner if at all possible given Respondent's mistake of not removing the leave balance and Petitioner's efforts to avoid being overpaid.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner repay \$10.00 to the Department of Health monthly and continue each month thereafter until the \$1,022.45 overpayment amount is repaid.

DONE AND ENTERED this 14th day of November, 2014, in
Tallahassee, Leon County, Florida.

June C. McKinney

JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of November, 2014.

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.