

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANTHONY MCFARLANE,

Petitioner,

vs.

Case No. 15-1122

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy by video teleconference at sites in Tallahassee and Lauderdale Lakes, Florida, on May 13, 2015.

APPEARANCES

For Petitioner: Anthony McFarlane, pro se
7971 Northwest 11th Street
Plantation, Florida 33322

For Respondent: Kurt E. Ahrendt, Esquire
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner, Anthony McFarlane, was overpaid in the amount of \$978.69 as a result of utilizing more administrative leave than that to which he was entitled.

PRELIMINARY STATEMENT

Petitioner, Anthony McFarlane, seeks to have Respondent's, Agency for Persons with Disabilities (Agency), request for remittance of \$978.69 for overpaid Administrative Leave time withdrawn. As a result of the Agency's alleged overpayment to Petitioner, the Agency initiated action to request repayment. On or about February 6, 2015, the Agency sent a letter to Petitioner informing him of the overpayment and requesting remittance of \$978.69 within thirty days. Petitioner timely requested an administrative hearing, and this matter was referred to the Division of Administrative Hearings on March 4, 2015.

At the final hearing, the Agency called one witness, Jennifer Phaneuf, a Human Resources Manager at the Agency, and offered Respondent's Exhibits A through F that were admitted into evidence. Petitioner testified on his own behalf and did not produce any additional witnesses or exhibits.

Neither party ordered a transcript of the final hearing. The parties were permitted to file their proposed recommended orders (PROs) by May 26, 2015. Respondent filed its PRO on May 26, 2015. Petitioner did not file a PRO. The Respondent's PRO has been taken into consideration in the drafting of this Recommended Order.

Unless otherwise indicated, all statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. Petitioner was an employee of the Agency's Central Office during the pay periods of February 14, 2014, to February 27, 2014; February 28, 2014, to March 13, 2014; and March 14, 2014, to March 27, 2014. Although the exact dates of Petitioner's employment by the Agency are unknown, he was also employed by the Agency and its predecessor entities prior to, and subsequent to, those dates for a total of approximately eighteen years.

2. Petitioner retired from the Agency on April 4, 2014.

3. Petitioner, prior to his retirement, attempted to use the surplusage of leave time he had accumulated for which he would not be compensated upon retiring.

4. The Agency uses the People First system for the submittal of employee time sheets and tracking of individual employees' accrued paid leave time. The system maintains the amount of Annual Leave, Sick Leave, and Special Compensation Leave available to each individual employee. Further, although Sick Leave can be used at any time, Annual Leave cannot be used until Special Compensation Leave is depleted.

5. Administrative Leave--Other is not maintained on an individual level and employees are not automatically prohibited from using more Administrative Leave--Other than that to which they are entitled nor are they required to deplete their Special Compensation Leave prior to using Administrative Leave.

Administrative Leave--Other is made available to employees only in special circumstances such as an office closure due to a hurricane, plumbing leak, or air conditioner failure, or an unscheduled paid holiday authorized by the Governor.

6. During the pay period of February 14, 2014, to February 27, 2014, Petitioner used sixteen hours of Special Compensation Leave (Code 0055) and sixteen hours of Sick Leave (Code 0052).

7. During the pay period of February 28, 2014, to March 13, 2014, Petitioner used seventy-two hours of Administrative Leave--Other (Code 0056). No special circumstances entitling Petitioner to take Administrative Leave--Other hours occurred during this pay period.

8. During the pay period of March 14, 2014, to March 27, 2014, Petitioner used five hours of Special Compensation Leave (Code 0055) and seventy-five hours of Annual Leave (Code 0051).

9. In February of 2015, the Office of the Inspector General published an audit of the Agency's human resources practices at its Central Office. The audit showed that seventy-two hours of Annual Leave were miscoded as Administrative Leave--Other, resulting in a \$1,059.84 leave balance overpayment.

10. The Agency then determined that Petitioner was the individual whose Annual Leave time had been miscoded as Administrative Leave--Other and had therefore been overpaid

\$1,059.84. After adjusting the amount for taxes and benefits withheld, the Agency concluded that the amount overpaid directly to Petitioner was \$978.69.

11. During the hearing, Petitioner for the first time realized and admitted that in his attempt to deplete his Special Compensation Leave before using his Annual Leave, he made an error in using Code 0056 (Administrative Leave--Other) when he intended to use Code 0055 (Special Compensation Leave).

CONCLUSIONS OF LAW

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

13. Petitioner, as the party seeking to prove the affirmative of an issue, has the burden of proof. See Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349 (Fla. 1st DCA 1977).

14. This case does not involve penal or licensure disciplinary issues and therefore the standard of proof is a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

15. Section 110.1165(1) provides remedies for executive branch personnel errors, including overpayment, and reads:

(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.


16. It is clear in this case that the issue is one regarding error, wherein Petitioner accidentally miscoded his hours as Administrative Leave--Other instead of Annual Leave and wherein his supervisor erroneously approved the hours without noticing the error. However, the above-referenced statute clearly articulates that error is not grounds for relief unless Petitioner has shown reasonable reliance on a written representation, which he has not. Therefore, Petitioner does not qualify for relief under the law and owes the Agency \$978.69.

17. Petitioner testified that the immediate and full repayment requested by the Agency would be an extreme burden on his limited, fixed income. The undersigned recommends that Petitioner be permitted to repay the amount owed to the Agency at a rate of \$100.00 per month until the balance is eliminated.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner repay \$100.00 per month to the Agency until the \$978.69 balance is repaid in full.

DONE AND ENTERED this 5th day of June, 2015, in Tallahassee, Leon County, Florida.



MARY LI CREASY
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 5th day of June, 2015.

COPIES FURNISHED:

Kurt Eric Ahrendt, Esquire
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

Anthony McFarlane
7971 Northwest 11th Street
Plantation, Florida 33322-5158

David De La Paz, Agency Clerk
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

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

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

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.