

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JASMINNE MYLES,

Petitioner,

vs.

Case No. 16-1315

DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.

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RECOMMENDED ORDER

A final hearing was held in this matter before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearings (DOAH), on April 14, 2016, in Daytona Beach, Florida.

APPEARANCES

For Petitioner: Jasminne Myles, pro se
222 Ontario Court
Daytona Beach, Florida 32114

For Respondent: Jane Almy-Loewinger, Esquire
Department of Children and Families
210 North Palmetto Avenue, Suite 447
Daytona Beach, Florida 32114

STATEMENT OF THE ISSUES

The issues are whether Petitioner received a salary overpayment at the time of her separation from employment with Respondent to which she was not entitled, as set forth in correspondence dated February 5, 2016; and, if so, whether

Respondent is entitled to a repayment for the salary overpayment made to Petitioner.

PRELIMINARY STATEMENT

In a letter dated February 5, 2016, Petitioner received notice of the decision of the Department of Children and Families (Department) to require Petitioner to compensate the Department for the agency's error in calculating Petitioner's salary payment due to the late submission of Petitioner's separation package. Respondent contended in its notice that Petitioner had a salary overpayment for a total of 40 hours in the amount of \$408.86.

Petitioner timely filed a Request for Administrative Hearing to contest the findings of the Department that Petitioner received an overpayment and must remit the amount due to Respondent. On March 10, 2016, the matter was referred to DOAH. Based on the response of the parties to the March 10, 2016, Initial Order, the final hearing was scheduled for April 14, 2016, in Daytona Beach, Florida.

At the hearing, Petitioner presented her own testimony. No other witnesses were called by Petitioner, and Petitioner offered no exhibits. Respondent presented the testimony of Susan Monick, Human Resources Shared Services Representative for the Department, and offered one composite exhibit, which was admitted into evidence.

A one-volume Transcript of the final hearing was filed on April 22, 2016. On April 25, 2016, Respondent filed a Proposed Recommended Order. Petitioner did not file a proposed order.

References to statutes are to Florida Statutes (2015), unless otherwise noted.

FINDINGS OF FACT

1. Petitioner, Jasminne Myles, was hired as a career service employee of the Department in the position of Economic Self Sufficiency Specialist I in the Office of Economic Self Sufficiency, with an effective appointment date of May 22, 2015, which included a 12-month probationary status.

2. Petitioner resigned from her employment with the Department effective January 21, 2016. At that point, she had been employed with the Department for eight months, placing her squarely within the 12-month probationary period.

3. Petitioner's supervisor submitted her approved, accurate time record 26 minutes late on February 3, 2016, which resulted in Petitioner being paid for 80 hours for the month, rather than for the 40 hours to which she was entitled to be paid during her last pay period.

4. Petitioner testified that she was told by various supervisory employees of the Department who ranked above her and upon whose statements she believed she could rely, that she was entitled to her entire amount of unused annual leave. She

believed her final paycheck in the amount she usually received, was the one to which she was entitled.

5. Unfortunately for Petitioner, any information she received or believes she received from her supervisors in this regard, was incorrect. The Department is bound by statute and rule as to how its employees are paid, including the handling of leave pay-outs for employees during their probationary periods.

6. Petitioner believed she had been properly compensated until she was contacted by Susan Monick, who informed her of the overpayment. She was told that, because she had not been employed by the Department for 12 months, she was not allowed to take her unused vacation time.

7. While Petitioner did not recall receiving or reading the employee handbook given to her by the Department outlining CFOP 60-1, which mirrors the applicable Florida Administrative Code Rule 60L-34.0041(6) (a), she acknowledged that the language put before her at the hearing supported the Department's position regarding her entitlement to the leave pay-out.

8. Ms. Monick testified that she has been employed by the Department for 33 years and that she sent Petitioner a letter notifying her of the overpayment in the amount of \$408.46 on February 5, 2016. She acknowledged Petitioner's service of eight months and the fact that the paycheck had been automatically generated due to the barely late filing of Petitioner's

termination paperwork. She also told Petitioner that she must repay the full \$408.86, the overpayment amount.

9. Ms. Monick stated that if Petitioner had extended her separation date by one week and used her annual leave, she would not have been overpaid and would have been entitled to the full amount of the paycheck.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

11. Petitioner has the burden of proving by a preponderance of the evidence that she is not responsible for the repayment of funds erroneously paid to her by the Department due to its error in determining the amount of leave due to Petitioner. See Balino v. Dep't of Health & Rehabilitative Servs., 348 So. 2d 349 (Fla. 1st DCA 1977); McDonald v. Dep't of Prof'l Reg., 582 So. 2d 660 (Fla. 1st DCA 1991).

12. Rule 60L-34.001(6) (a) provides in relevant part:

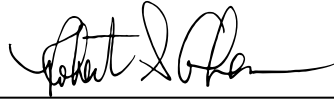
A career service employee who separates from state government with twelve continuous months of service shall be paid for unused annual leave, up to a lifetime maximum of 240 hours. With respect to leave payments received at the time of separation, agencies shall only include payments for separations occurring after December 31, 2001.

13. Here, Petitioner worked at the Department only eight months. The only reason she was overpaid was due to her supervisor's filing her separation paperwork 26 minutes late. Petitioner is not entitled to keep the overpayment because she has not satisfied the rule requirement of 12 continuous months of state employment. In this case, Petitioner cannot meet her burden of proving her entitlement to keeping the overpayment, because she has no entitlement to the extra money. Petitioner has failed to show she met the threshold requirement of 12 continuous months of state employment and, therefore, is not entitled to keep the overpayment of \$408.86.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families enter a final order requiring Petitioner to repay the salary overpayment in the amount of \$408.86.

DONE AND ENTERED this 29th day of April, 2016, in
Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of April, 2016.

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.