

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

Case No. 17-2944

NANCY E. MILLS,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to Notice, a formal hearing was held in this case before W. David Watkins, a duly designated Administrative Law Judge of the Division of Administrative Hearings, on July 21, 2017, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Maria Shameem Dinkins, Esquire
Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399

For Respondent: Nancy Mills, pro se
191 Nursery Road
Monticello, Florida 32344

STATEMENT OF THE ISSUE

What relief, if any, should be provided by Petitioner to Respondent as the result of an accidental overpayment, and the subsequent recoument of the overpayment?

PRELIMINARY STATEMENT

On May 15, 2017, Respondent, Nancy E. Mills (Ms. Mills), filed a written request for administrative hearing (Petition) with her employer, the Florida Department of Corrections (DOC). In her Petition Ms. Mills stated:

I was negatively affected by the Region 1 payroll issue that occurred in March of 2017. I was underpaid and overpaid in both regular and overtime wages, which has resulted in inaccurate Year to Date (YTD) Payments. These inaccurate YTD figures will jeopardize my family's eligibility and amount of monthly benefit assistance from DCF. I am required to re-certify eligibility in June of 2017. These errors may result in my family's assistance being reduced or terminated, with additional financial hardship possible to settle what DCF may consider overpayment of benefits, or worse if interpreted as suspected/attempted fraud and failure on my part to report additional earned income. The undue financial and emotional stress of this event has been an ongoing issue since the beginning of March 2017, and will continue into 2018 until my 2017 taxes are accepted by the IRS, unless resolved. As an individual diagnosed with Multiple Sclerosis (MS), the extent of damages and suffering to my health are not yet known, but will also be reviewed in June 2017.

DOC referred the request for hearing to the Division of Administrative Hearings (DOAH) on May 17, 2017, where the matter was assigned DOAH Case No. 17-2944, and assigned to the undersigned for the conduct of a formal administrative hearing.

By notice dated May 25, 2017, the hearing was scheduled for July 21, 2017, in Tallahassee, Florida.

The final hearing convened as scheduled. At hearing, DOC presented the testimony of Dave Vermette, senior personnel manager for DOC. DOC offered Exhibits A through D, all of which were received into evidence. Respondent testified on her own behalf, but did not call any other witnesses. Respondent's Exhibits 1 and 2 were received in evidence. A court reporter was not present at the final hearing.

At the conclusion of the final hearing it became clear to the undersigned, and to the parties, that the remedies offered by DOC to address Ms. Mills' concerns would likely resolve the matter to the satisfaction of both parties. Accordingly, both parties agreed to attempt to arrive at a settlement agreement, and specifically, to identify the amount and types of payroll adjustments that would be necessary to resolve Ms. Mills' concerns. It was agreed that the parties would confer and that DOC would draft a proposed settlement agreement and provide it to Ms. Mills by July 21, 2017, and in turn, that Ms. Mills would notify DOC of her acceptance or rejection of the settlement document by not later than September 15, 2017.

On July 24, 2017, the undersigned entered an Order placing the case in abeyance, instructing the parties to advise the

undersigned as to the status of their settlement efforts by not later than October 2, 2017.

On September 27, 2017, the undersigned was made aware that the wheels had come off the settlement bus. On that date, DOC filed a Notice of Noncompliance, advising that efforts to reach a settlement had not been successful. Thereafter, followed several additional filings by the parties, each placing the blame for the settlement failure on the other.

On November 21, 2017, the undersigned entered an Order Lifting Abeyance and Authorizing the Submittal of Proposed Recommended Orders, instructing the parties of the opportunity to file proposed recommended orders by not later than December 15, 2017.

Thereafter, the parties timely submitted Proposed Recommended Orders (PROs), both of which have been carefully considered in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to the 2017 version of the Florida Statutes.

FINDINGS OF FACT

1. Ms. Mills has been employed by DOC for approximately four years, and was employed by DOC as of the date of hearing.

2. Due to human error in implementing a new payroll system (KRONOS), on March 17, 2017, Ms. Mills was overpaid in the

amount of \$494.01. The error affected over 5,000 employees of DOC.

3. To address the overpayment, DOC corrected the error by deducting \$247.01 from Ms. Mills' regular paycheck of April 27, 2017, and \$247.00 from Ms. Mills' regular paycheck of May 12, 2017, for a total adjustment of \$494.01.

4. Due to the erroneous overpayment, an excess amount of federal income tax withholding (\$155.65) was withheld from Ms. Mills' paycheck of March 17, 2017.

5. Dave Vermette, DOC's senior personnel manager, attempted to determine whether it was possible to correct the excess federal income tax withheld by reducing future federal tax withholding during the remainder of 2017. Unfortunately, it was determined that such an adjustment could not be made.

6. To address Ms. Mills' concerns that the erroneous overpayment might affect her eligibility for means-tested public assistance, on June 1, 2017, DOC provided Ms. Mills with a letter explaining the overpayment so that Ms. Mills could show it to any of the agencies from which she receives benefits based on her income. The letter made clear that Ms. Mills was in no way responsible for the overpayment and offered to respond to any questions that other agencies might have about the incident.

7. The June 1, 2017, DOC letter confirmed that, as of that date, Ms. Mills' year-to-date earnings statement was correct.

8. At hearing, Ms. Mills testified that she was concerned that the overpayment might jeopardize her eligibility for assistance from the Florida Department of Children and Families (DCF). However, at hearing she presented no evidence that her eligibility would, in fact, be affected.

9. If in the future Ms. Mills' eligibility for assistance from DCF is adversely affected by DOC's overpayment error, she will have an opportunity at that time to contest DCF's determination pursuant to the provisions of the Administrative Procedure Act, chapter 120, Florida Statutes.

10. DOC did not purposely overpay Ms. Mills, and the amount of the overpayment was quickly recouped by DOC. DOC has taken all reasonable steps to mitigate any potential effects of the overpayment error.

11. The excess federal income tax withholding will be recovered by Ms. Mills when she files her 2017 federal income tax return.

12. Other than the speculative effect on Ms. Mills' eligibility for DCF assistance, Ms. Mills did not establish that she had suffered injury in fact as a result of the overpayment error.

13. At hearing, and in her PRO, Ms. Mills was non-specific about the relief that she was requesting. In her PRO, Ms. Mills stated that she "respects this court's ability and duty to

determine an appropriate final order based on all information related to this case.” She went on to state that if there is a monetary award, it should in no way be considered to be additional income accruing to her.

14. Ms. Mills failed to prove that she had suffered any injury as the result of the DOC error. Thus, even if the undersigned was inclined to recommend monetary relief, there is no basis in this record upon which to determine an appropriate monetary award.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 & 120.57(1), Fla. Stat. (2017).

16. 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, and shall be based exclusively on the evidence of record and on matters officially recognized. § 120.57(1)(j), Fla. Stat.

17. “The general rule is that, apart from statute, the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal.” Young v. Dep’t of Cmty. Aff., 625 So. 2d 831, 833 (Fla. 1993); see also Beshore v. Dep’t of Fin. Servs., 928 So. 2d 411 (Fla. 1st DCA 2006); Fla. Dep’t of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st

DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977).

18. Ms. Mills, as the party asserting the affirmative of an issue, carries the burden of demonstrating her entitlement to affirmative relief. She also bears the burden of establishing that her substantial interests are, or have been, affected by the challenged agency action. § 120.569(1), Fla. Stat. This latter requirement is typically referred to as standing.

19. Standing exists if a party can prove: (1) "injury in fact" of sufficient immediacy, and (2) that the injury is of a type the proceeding is designed to protect, commonly referred to as the "zone of interest" test. N. Ridge Gen. Hosp., Inc. v. NME Hosps., Inc., 478 So. 2d 1138, 1339 (Fla. 1st DCA 1985); Agrico Chem. Co. v. Dep't of Env'tl. Reg., 406 So. 2d 478, 482 (Fla. 2d DCA 1981). "The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury." Id.

20. Ms. Mills did not establish that she had suffered an injury as a result of the DOC error, or that she was likely to suffer future injury of sufficient immediacy to convey standing. Rather, the future injury of concern to Ms. Mills is speculative, at best, and remote in time. Accordingly, Ms. Mills has failed to establish that the first prong of the Agrico test has been met.

21. Here, the record evidence does not establish a basis upon which to recommend affirmative relief be awarded to Ms. Mills, be it monetary or otherwise. Moreover, the unrebutted testimony showed that DOC took immediate steps to rectify its error and to mitigate any potential injury that might flow from the error.

22. Should Ms. Mills' fears become reality sometime in the future, in the form of reduced benefits or loss of eligibility for DCF programs or services as a result of the error, she will have an opportunity to contest that agency determination in a separate proceeding pursuant to chapter 120, Florida Statutes.

RECOMMENDATION

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

RECOMMENDED that the Petition filed by Nancy E. Mills be dismissed.

DONE AND ENTERED this 18th day of January, 2018, in
Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
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this 18th day of January, 2018.

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.