

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHANACE ISAAC,

Petitioner,

vs.

Case No. 18-4664

DEPARTMENT OF HEALTH,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, Administrative Law Judge Yolonda Y. Green of the Division of Administrative Hearings ("Division"), conducted a formal hearing in this case on December 14, 2018, in Palatka, Florida.

APPEARANCES

For Petitioner: Shanace Isaac, pro se
Post Office Box 101
Hastings, Florida 32145

For Respondent: Riley Michelle Landy, Esquire
Department of Health
Bin A-02
4052 Bald Cypress Way
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner was overpaid in the amount of \$809.46; and, if so, whether she should be required to repay that amount to Respondent.

PRELIMINARY STATEMENT

By certified letter dated May 30, 2018, Florida Department of Health ("Respondent" or "Department") notified Shanace Isaac ("Petitioner" or "Ms. Isaac"), a former Department employee, that she owed \$809.46 because she had received salary overpayments. Petitioner disputed the Department's proposed action on July 2, 2018, and requested a formal administrative hearing. On September 6, 2018, Respondent referred this case to the Division for assignment of an administrative law judge and the case was assigned to the undersigned.

The undersigned initially scheduled this matter for November 8, 2018. Petitioner, however, did not appear due to misinformation regarding the hearing location. This matter was subsequently rescheduled for December 14, 2018.

Pursuant to notice, the hearing convened as scheduled. 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: Sarah Caron, human resources manager for the northeast region for the Department of Health; and Catrina Anderson, a personnel technician III with the Florida Department of Health in Alachua County. Respondent's Exhibits R-1 and R-2 were admitted into evidence.

The parties requested that the hearing be transcribed. The one-volume official Transcript was filed with the Division on February 8, 2019. The parties each timely filed Proposed Recommended Orders, which have been considered in preparation of this Recommended Order.

Except as otherwise indicated, citations to the Florida Statutes refer to the 2017 version, which was in effect during the time the alleged overpayment was made.

FINDINGS OF FACT

1. At all times material to this matter, Petitioner was a career service employee of Respondent until her separation in October 2018.

2. Petitioner went into labor unexpectedly in December 2017, and as a result, she began maternity leave. Petitioner was not present at work and did not submit a timesheet for the timeframe of December 29, 2017, through July 2, 2018. Petitioner testified that she was unable to submit her timesheets electronically and for this reason, someone else submitted them on her behalf. The evidence presented at hearing did not show who submitted her timesheets.

3. By May 23, 2018, Petitioner had exhausted all of her annual, sick, and donated leave.

4. Once an employee of Respondent no longer has sick leave remaining, annual leave is used to cover any shortages of sick

leave. An employee may use donated leave to cover any shortages. Once an employee has exhausted annual, sick, and donated leave, the employee cannot be paid for additional time taken as leave. The additional time during leave is considered "leave without pay" ("LWOP").

5. Petitioner was placed on LWOP from March 23, 2018, through July 2, 2018, because she had exhausted all of her leave.

6. Although Petitioner was on LWOP during the pay period of May 4, 2018, through May 17, 2018, a pay warrant for 80 hours of work was inadvertently issued on May 25, 2018, for that pay period. Consequently, Petitioner was overpaid \$809.46.

7. Petitioner was not responsible for the overpayment. She did not submit her timesheets and, thus, did not falsify them. Petitioner testified that her supervisor verbally advised her that she had received donated leave, but she could not recall the amount. Petitioner also did not offer any written representation from her supervisor or otherwise regarding her leave.

8. The overpayment resulted because Petitioner's timesheet for LWOP for the pay period of May 4, 2018, through May 17, 2018, was not timely approved.

9. Upon discovery of this error, Respondent's human resources office conducted a manual audit of Petitioner's leave.

Ms. Anderson completed the leave audit and discovered that Petitioner had been overpaid for the May 4, 2018, through May 17, 2018, pay period.

10. On May 30, 2018, the Department sent Petitioner a certified letter requesting the overpaid amount of \$809.46.

11. Petitioner became aware of the error when she received the Department's letter. Petitioner's pay was transmitted to her bank account electronically via direct deposit. However, she was not monitoring her bank account closely and did not immediately realize that she had been erroneously overpaid.

12. At the time of the final hearing, Petitioner had not paid the overpayment. Petitioner stated she could only pay \$40 per month to repay the overpayment.

CONCLUSIONS OF LAW

13. The Division has jurisdiction over the subject matter and the parties to this action pursuant to section 120.57(1), Florida Statutes (2018).

14. 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).

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

16. Thus, Petitioner has the burden of proving by a preponderance of evidence that she is not required to repay the overpaid amount.

17. "Each agency shall keep an accurate record of all hours of work performed by each employee, as well as a complete and accurate record of all authorized leave which is approved." § 110.219(4), Fla. Stat.

18. To determine the process for overpayment made in error by an agency, section 110.1165, Florida Statutes, provides:

(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.

(2) An agency of the executive branch, including the State University System, is authorized to take such action as may be appropriate to provide a remedy for an

employee concerning his or her claim regarding detrimental reliance on erroneous written information provided by the employing agency relating to pay and benefits, provided such remedy is within the purview of the agency's authority.

19. Here, the evidence demonstrates that Petitioner was overpaid in the amount of \$809.46 because the Department did not approve her LWOP timesheet before the warrant issue date (May 25, 2018).

20. Despite Petitioner's claim that she should not be required to repay the overpayment because it was not her fault, she did not offer any evidence to support her position that she is entitled to keep the funds that Respondent overpaid to her.

21. The evidence presented in this case does not show that Petitioner was provided any erroneous written representation regarding her leave. Her supervisor's purported (and unsupported) verbal representation is insufficient under Florida law. Thus, Petitioner has not produced sufficient evidence that she should be exempt from the requirement to repay the overpaid amount.

22. Based on the foregoing, Petitioner did not meet her burden of proof and is required to repay the Department \$809.46.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Health enter a final Order requiring Shanace Isaac to repay Respondent \$809.46.

DONE AND ENTERED this 7th day of March, 2019, in Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of March, 2019.

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.