

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-776

No. COA22-63

Filed 15 November 2022

Office of Administrative Hearings, No. 21 OSP 01390

CHRISTOHPER L. STOCKLI, Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Respondent.

Appeal by respondent from final decision entered 18 October 2021 by Administrative Law Judge Karlene S. Turrentine in the Office of Administrative Hearings. Heard in the Court of Appeals 20 September 2022.

*Jennifer J. Knox for petitioner-appellee.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Jaren E. Kelly, for respondent-appellant.*

DIETZ, Judge.

¶ 1 The North Carolina Department of Public Safety appeals a final decision awarding back pay to Christopher Stockli. The agency contends that the award improperly included pay for overtime work.

¶ 2 As explained below, the administrative law judge properly included that overtime pay based on competent evidence that it was “mandatory overtime,”

meaning overtime that Stockli's employer required him to work because of staffing shortages. The ALJ properly determined that this mandatory overtime fell within the definition of Stockli's "regular salary" for purposes of back pay. We therefore reject the agency's argument and affirm the final decision of the Office of Administrative Hearings.

### **Facts and Procedural History**

¶ 3 In 2020, the North Carolina Department of Public Safety terminated Christopher Stockli's employment at the Pasquotank Correctional Institution. Stockli challenged his termination through a contested case in the Office of Administrative Hearings and an administrative law judge entered a final decision reinstating Stockli and awarding him back pay. That back pay award included his salary for regular working days and also back pay for two days of "mandatory overtime" that Stockli testified he was required to work because of staffing shortages at the correctional institution. The agency appealed the ALJ's final decision, challenging the award of back pay.

### **Analysis**

¶ 4 The sole issue in this appeal is whether the ALJ erred by including in Stockli's back pay determination "two days of mandatory overtime [pay] for each month he has missed since being terminated." The agency contends that the ALJ only had authority

to award back pay based on Stockli's "regular salary" and that overtime pay cannot be included in the calculation of an employee's regular salary.

¶ 5 By statute, when an ALJ determines that a state agency lacked just cause to terminate an employee, the ALJ may provide several forms of relief to the employee including "payment for any loss of salary" resulting from the improper termination. N.C. Gen. Stat. § 126-34.02. Accompanying OAH regulations authorize ALJs to include in a back pay calculation "any across-the-board compensation that would have been included in the grievant's regular salary except for the interruption in employment." 25 N.C. Admin. Code 1J.1306(9).

¶ 6 The term "salary" is undefined in the statute and corresponding regulation. The parties acknowledge that, because the word "salary" is undefined, it should be given its ordinary meaning in English usage. In ordinary English usage, salary generally means "fixed compensation paid regularly for services." *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003).

¶ 7 At the hearing, Stockli testified that he worked 14 days each month at his regular pay scale and also worked overtime. Some of that overtime was voluntary, Stockli testified, but two to three days each month was "mandatory overtime" that he was required to work because the correctional institution was "shorthanded":

[STOCKLI'S COUNSEL]: Do you recall what your salary was, your -- your base salary?

STOCKLI V. N.C. DEP'T OF PUB. SAFETY

2022-NCCOA-776

*Opinion of the Court*

[STOCKLI]: For 2020, the base salary is about 32,000, but I was already at about 68,000, I believe.

Q: And that -- why was it so high? Why was it double your -- your base salary?

A: Because we only worked 14 days out of the month, and I worked seven to ten days on the other shift -- the other day shift.

Q: Overtime?

A: Overtime.

Q: How many days of mandatory overtime were you required to -- to work each month?

A: Two to three days.

...

THE COURT: Is that a written policy or something that you have mandatory overtime?

[STOCKLI]: It -- I don't know if it falls under any policy. I know that we were shorthanded, and the captain -- Captain Stokley of the other shift told me to come in whenever I wanted.

THE COURT: Now, I -- I -- okay. I understand that you had some overtime that you did just because you wanted overtime, but I'm -- I'm curious about the mandatory overtime. How were you made aware that there was mandatory overtime? Where will I find that?

A: You won't.

THE COURT: How were you made aware?

A: You're given, at the beginning of each month, a sheet that has all of the employees on your shift, and it has you -  
- what days you are scheduled to work on the other shift.

THE COURT: So you simply work the hours that you're shifted to work.

A: You work -- you work -- I work -- yeah, you work your hours, but then they also have on that paperwork on your work schedule for the month what days you're supposed to show up for the other shift.

THE COURT: Yes, okay.

Based on this testimony, the ALJ awarded Stockli “back pay, including two days of mandatory overtime for each month he has missed since being terminated.”

¶ 8           The agency argues that the “only evidence in the record of any allegedly mandatory overtime is Petitioner-Appellee’s own self-serving testimony.” But self-serving or not, Stockli’s testimony is unrebutted, sworn testimony. If the agency believed Stockli’s testimony about his “mandatory overtime” was incorrect, it could have presented its own counter-evidence. The agency did not do so.

¶ 9           The ALJ, in turn, chose to credit Stockli’s undisputed testimony about his mandatory overtime. *Harris v. N.C. Dep’t of Pub. Safety*, 252 N.C. App. 94, 100, 798 S.E.2d 127, 133, *aff’d*, 370 N.C. 386, 808 S.E.2d 142 (2017). Based on this competent evidence, the ALJ properly determined that Stockli’s “fixed compensation paid regularly” for his work included both his normal work schedule and two days of mandatory overtime work per month that was necessary because Stockli’s employer

was understaffed. The ALJ therefore included two overtime days in the calculation for Stockli's "regular salary." This is consistent with both the applicable statute and accompanying OAH regulations. N.C. Gen. Stat. § 126-34.02; 25 N.C. Admin. Code 1J.1306(9). We therefore reject the agency's argument and affirm the ALJ's decision.

**Conclusion**

¶ 10

We affirm the final decision.

AFFIRMED.

Judges INMAN and JACKSON concur.

Report per Rule 30(e).