B-11

STATE OF NEW JERSEY

In the Matter of Chidozie Nwisu, Human Service Assistant (Special), Hunterdon Developmental Center	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2016-3923	:	List Removal Appeal

ISSUED: FEB 10 2017 (SLK)

Chidozie Nwisu appeals the removal of his name from the Human Service Assistant (Special), Hunterdon Developmental Center, eligible list on the basis of his failure to complete pre-employment processing.

By way of background, the appointing authority advised the appellant on October 15, 2015 that he had 72 hours to complete a drug test. However, he did not complete the drug test during this time frame. Instead, on October 19, 2015, the appellant contacted the appointing authority acknowledging that he did not complete the drug test as directed and asked if he could complete it on that date. The appointing authority advised him that since he failed to complete the drug test within 72 hours as directed, it could not offer him employment. Additionally, the appellant provided the appointing authority a letter dated October 27, 2015 where he expressed his interest in the position. However, the appellant did not provide any reason to the appointing authority when he contacted it on October 19 or in his letter of October 27 why he could not complete the drug test within the required time frame. Therefore, in disposing of the certification, the appointing authority removed the appellant's name, contending that he failed to appear for pre-employment processing.

On appeal, Mr. Nwisu explains that he did not appear for the drug test due to a health issue. He asserts that he had a medical issue and was on medication which caused him to be drowsy at that time. The appellant presents that he both called and visited the appointing authority a few days after he was contacted to take the drug test. However, Human Resources advised him that he was no longer being considered

for employment. He submits an October 10, 2016 letter from his doctor stating that he was under his care and on bed rest from October 2, 2015 to November 6, 2015 due to a medical condition.

In reply, the appointing authority presents that per Executive Order and its Drug Testing Policy, the appellant was notified on October 15, 2015 that he had 72 hours to complete his drug test. However, the appellant failed to do so and did not contact the appointing authority during this time frame. Thereafter, on October 19, 2015, he contacted Human Resources, acknowledged that he did not complete his drug test within the required time frame, and asked if he could take his drug test that day. Human Resources advised the appellant that he could no longer be considered for employment since he failed to complete his drug test within the required time frame. It emphasizes that at no point during his conversation with Human Resources, or at any other time, did he claim that the reason he did not report for his drug test within the required time frame was due to a medical emergency and his being drowsy due to medication. The appointing authority also questions that if he was ill as indicated in his doctor's letter, why did he request to complete his drug test on October 19, 2015. Further, the appointing authority notes that the appellant did not provide the appointing authority his doctor note until November 15, 2016, more than 1 year after he was required to take the drug test. Additionally, even after receiving the appointing authority's November 24, 2015 letter indicating that he was not being considered for employment due to his failure to appear for a drug test, he did not contact it claiming he had a medical emergency. Therefore, it questions the appellant's claim that he was too sick to be drug tested as required.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)11 allows the Civil Service Commission to remove an eligible's name from an eligible list for other valid reasons. *N.J.A.C.* 4A:4-6.3(b) in conjunction with *N.J.A.C.* 4A:4-4.7(d) provides that the appellant has the burden of proof to show by a preponderance of the evidence that the appointing authority's decision to remove the appellant's name from the eligible list was in error.

In the instant matter, the appointing authority had sufficient reason to remove the appellant's name from the subject eligible list. On October 15, 2015, the appellant was advised that he had 72 hours to complete his drug test. The appellant failed to do so and did not contact the appointing authority during this time frame. Thereafter, on October 19, 2015, the appellant asked if he could complete his drug test on that date. However, the appellant has not presented any evidence that the reason he did not appear for his drug test was that he had a medical emergency and was too drowsy due to medication. Thereafter, in an October 27, 2015 letter to the appointing authority, he expressed his interest in employment in a position in the subject title. However, the appellant did not raise the issue that the reason he failed to appear for his drug test was that he had a medical emergency. Further, after the

appointing authority notified him in November 2015 in writing that he was no longer being considered for employment, he did not claim that he was too ill to appear for his drug test during the required time period. It was not until his appeal did the appellant first claim that the reason he failed to appear as required was due to a medical condition. Moreover, his doctor's October 10, 2016 letter indicates that he was on bed rest between October 2, 2015 to November 6, 2015. Therefore, it is not clear why he would request to take his drug test on October 19, 2015, if he was unable to do so within the required time frame because he was on bed rest. This inconsistency along with the above seriously undermines the appellant's credibility in this matter.

Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Human Service Assistant (Special), Hunterdon Developmental Center, eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 8th DAY OF FEBRUARY, 2017

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