

In the Matter of Martin Carluccio, Safety Specialist Trainee, DMV (S0599J), Motor Vehicle Commission

CSC Docket No. 2012-3581

(Civil Service Commission, decided November 7, 2012)

The Superior Court of New Jersey, Appellate Division, has remanded the Civil Service Commission's (Commission) decision upholding the removal of Martin Carluccio's name from Safety Specialist Trainee, DMV¹ (S0599J), Motor Vehicle Commission (MVC), eligible list. The court did not retain jurisdiction. Copies of the Appellate Division's decision and the Commission's decisions, *In the Matter of Martin Carluccio* (CSC, decided July 22, 2009), *aff'd on reconsideration* (CSC, decided May 26, 2010) are attached hereto and incorporated herein.

The facts of this matter are thoroughly discussed in the attached decisions. In the Commission's May 26, 2010 decision, it denied the appellant's request for reconsideration and upheld his removal from Safety Specialist Trainee, MVC (S0599J) eligible list. The appellant appealed that decision to the Appellate Division. The Appellate Division reversed and remanded to

[P]ermit the MVC to submit the entire [Safety Specialist Trainee, MVC] job description to the [State] Parole Board for consideration and determination as to whether the position of Safety Specialist, MVC provides "access to sensitive information that could threaten the public health, welfare, or safety." *N.J.S.A. 2A:168A-7(c)(1)*. The [Commission] may consider the [State] Parole Board's response on remand. *Id.* at 32.

On remand, the Commission notified the parties that the MVC could submit any documentation it possessed regarding the subject job description. In response, the MVC submitted a letter in which it described the access to certain computer programs that individuals in the Safety Specialist title series assigned to the Agency Services/Driver Testing, the Inspection Services Enhanced Inspection/Maintenance Unit and Inspection Services Bus Unit have. Specifically, it noted that Safety Specialists in all three units have access to the MVC's Comprehensive Computer System which houses all licensed drivers' information, including name, address, birth date, social security number, driver's license number, and vehicle and title information. Additionally, Safety Specialists in the Inspection Services Enhanced Inspection/Maintenance Unit have access to the National Insurance Crime Bureau which includes stolen vehicles, personal information regarding insurance claims, driver's license numbers, social security

¹ It is noted that the job title Safety Specialist Trainee, DMV, was changed to Safety Specialist Trainee, Motor Vehicle Commission (MVC), to reflect the current name of the agency.

numbers, and personal medical information; the National Crime Information Center (NCIC) which is used to track stolen cars and car parts maintained by the FBI; and the Criminal Justice Information Services (CJIS) which is maintained by the New Jersey Department of Law and Public Safety and is the State counterpart to the NCIC. It noted that the NCIC and CJIS contains, in part, information on stolen property, criminal conviction records, immigration violators, missing persons, parolees or individuals on supervised release, persons with active protection orders, Secret Service protective alerts, terrorist organizations and memberships, unidentified human remains information and violent gang organizations and memberships. The MVC indicated that all users of NCIC and CJIS may only be approved for use after a criminal background check by the State Police, since the information contained in those systems is extremely sensitive.

The appellant, represented by Stuart Ball, Esq., objected to MVC's response. Specifically, he argued that the Appellate Division decision stated that only the job specification was to be provided to the State Parole Board and therefore, MVC's submission was inappropriate.

The job specification for Safety Specialist Trainee, MVC, provides that an individual in that title, under close supervision in the MVC, as a trainee and productive worker, learns to examine driver testing applicants for licenses to operate motor vehicles and motorcycles; does varied tasks involved in determining the mechanical condition of motor vehicles and in maintaining Motor Vehicle Examination Centers and equipment in good condition; conducts office visits, field investigations and audits of the administration of laws/regulations pertinent to motor vehicle licensing/inspection functions; does other related duties as required. The job specification notes that the examples of work are for illustrative purposes only and that a particular position may not perform all duties listed and that conversely, all duties performed on the job may not be listed. Some of the examples of work are: examines documents presented by driver testing applicants such as proof of age or identity to ensure compliance with State law; learns to check the registration and basic safety equipment of vehicles being used by driver testing applicants and the license and insurance credentials of the driver accompanying the applicant in compliance with State law; learns to prepare and/or validate driver license documents according to MVC procedures; when vehicle is presented for inspection, inspects driver's credentials including license, registration, and insurance verification for compliance with MVC regulations, and takes appropriate action when a document appears fraudulent or invalid; when authorized, may in the course of normal duties validate driver licenses; may be required to issue summonses for violations of Title 39; learns to conduct field investigations to determine if applicants for Motor Vehicle Private Inspection Facilities (PIFs), Emission Repair Facilities (ERFs), New and/or Used Car Dealers, Junk Yards, Commercial Driving Schools, Secondary School Driver Education and Certification licensees and other businesses licensed by the MVC are proper persons to be

licensed; learns to conduct complaint, accident and facility investigations on PIFs, Centralized Inspection Facilities and ERFs, as well as illegal transportation investigations and prepares accurate/comprehensive reports of investigations including statements of witnesses and other persons interviewed; learns to investigate consumer complaints relevant to PIFs, New and/or Used Car Dealers, Junk Yards, Commercial Driving Schools and Secondary School Driver Education activities and other businesses licensed by the MVC and prepares accurate/comprehensive reports based on the findings; learns to prepare records of driver tests, vehicle inspection, and investigations and their outcomes as well as a daily reconciliation of inspection stickers and vehicle inspection reports and is responsible for security of assigned inspection cards and stickers; and will be required to learn to utilize various types of electronic and/or manual recording and information system used by the agency, office, or related units.

The information provided by the parties and the job specification for the Safety Specialist Trainee, MVC title, were forwarded to the State Parole Board for review and consideration pursuant to the Appellate Division's decision. In its decision, the State Parole Board indicated that it had reviewed the foregoing information and that its deliberation was based solely on whether the position of Safety Specialist, MVC, provides "access to sensitive information that could threaten the public health, welfare, or safety." It noted that of particular concern to it was that, according to the official job specification definition and examples of work, as well as MVC's detailed description, the position requires an individual to have access to confidential, sensitive information found in the MVC's Comprehensive Computer System and/or in the NCIC and CJIS databases. Based on its review, the State Parole Board determined that the position of Safety Specialist, MVC is provided access to sensitive information that could threaten the public health, welfare or safety and consequently, is exempt from the definition of "public employment" pursuant to *N.J.S.A. 2A:168A-7(c)(1)*. Therefore, it revoked the original Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures issued on June 24, 2009 and issued an amended certificate that reflects the removal of reference to employment as a Safety Specialist, MVC. As amended, the certificate is limited to the appellant obtaining employment as a Code Enforcement Official.

In response, the appellant asserts that the State Parole Board has "acceded to the pressure" asserted by the MVC, and without any investigation or inquiry, adopted the MVC's unsupported and conclusory statements that the subject position requires an individual to have access to confidential, sensitive information. The appellant disputes the MVC's statements that the State Parole Board relied on. Rather, he argues that an individual in the subject title would not have any access to confidential, sensitive information and that more specifically, there is nothing in the record which establishes that the Director, MVC Human Resources who wrote the response on behalf of the MVC, even "knows what [the appellant] would be

doing on a day to day basis or what the basis of her alleged knowledge is.” The appellant asserts that his job would be to inspect buses or trucks, and there is nothing in the record as to how he would end up accessing information on a computer that he doesn’t use and could be prohibited from using. Moreover, he maintains that the MVC’s submission was “legally far beyond” the scope of the “job description” that the Appellate Division stated should be the basis for the Commission’s decision. Additionally, the appellant argues that the meaning of “sensitive information that could threaten the public health, welfare or safety” has not been defined. Therefore, the appellant asserts that these issues can only be addressed after a “full trial” due to the fundamental factual dispute, *i.e.*, the actual facts as to what a Safety Specialist, MVC does, and more importantly, what the appellant “would actually be doing once he is reinstated into the position for which he qualified all too many years ago.”

No further arguments were received from the MVC.

CONCLUSION

Initially, the appellant requests a hearing in this matter. List removal appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b.* Hearings are granted in those limited instances where the Civil Service Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d).* No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978).*

Upon its review of the job specification and information provided by the parties, the State Parole Board determined that the position of Safety Specialist, MVC is provided access to sensitive information that could threaten the public health, welfare or safety and consequently, is exempt from the definition of “public employment” pursuant to *N.J.S.A. 2A:168A-7(c)(1).* As a result, it revoked the original Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures issued on June 24, 2009 and issued an amended certificate which only applies for the position of Code Enforcement Official. Consequently, as noted in the Commission’s July 22, 2009 decision:

. . . the position of Safety Specialist Trainee, MVC is a position that has access to sensitive information that could threaten the public health, welfare and safety, not only by having access to personal information of the customers of the MVC, but also by being responsible for insuring that an individual applying for a driver’s license or taking an examination is who that individual presents him or herself to be. Therefore, the ability to have access to personal information of customers, including social security numbers, and the responsibility of

ensuring the identity of the customers of the MVC, by an individual who has a conviction and has spent time in prison is particularly troubling. Further, the position of Safety Specialist Trainee, MVC is a vital position within the MVC, and the decision to hire the appellant would violate the public's trust.

Additionally, *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commission. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, fire fighter or correction officer title as to any arrest. *See also, N.J.S.A.* 39:2A-32, *et seq.*

Furthermore, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for an appointment.

As the Commission noted in its July 22, 2009 decision, the appellant's conviction was for a serious offense and he was 30 years old at the time of his arrest. Specifically, the appellant was arrested on October 30, 1996 and charged with aggravated assault and possession of a weapon for an unlawful purpose, he was found guilty of criminal attempt, aggravated assault, a felony, and was sentenced to five years probation. On March 24, 2000, the appellant's probation was revoked and he was sent to State prison for a term of three years. Moreover, other than the now revoked Certificate, the appellant failed to provide any information as to his rehabilitation. Therefore, under the totality of the circumstances presented in the record, the Commission finds that the appointing

authority has presented a sufficient basis to remove the appellant's name from the eligible list for Safety Specialist Trainee, DMV (S0599J), MVC.

ORDER

The Civil Service Commission finds that the appointing authority has presented a sufficient basis to remove the appellant's name from the eligible list for Safety Specialist Trainee, DMV (S0599J), Motor Vehicle Commission.

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