

CSC  
B-12



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael Falcaro,  
Cook (Special), Sussex County

List Removal

CSC Docket No. 2014-2387

ISSUED: NOV 19 2014 (HS)

Michael Falcaro appeals the attached decision of the Division of Classification and Personnel Management (CPM), which found that the appointing authority had presented a sufficient basis to remove his name from the special reemployment list for Cook, Sussex County on the basis of an unsatisfactory background report.

The appellant, a non-veteran, appeared on the Cook, Sussex County special reemployment eligible list and was certified to the appointing authority on January 23, 2013.<sup>1</sup> In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background report. It indicated that it discovered information during an interview with the appellant that precluded his appointment to a position in the County correctional facility. Specifically, the appointing authority asserted that in 2008, C.P., a friend of the appellant, requested the appellant to pay personal bills by debit card during his approximately four-year period of incarceration. Upon C.P.'s release from prison in July 2012, he questioned the appellant regarding \$15,000 missing from his savings account. Although the appellant initially denied knowledge of the missing funds, he later recanted and paid C.P. \$7,000 on September 20, 2012. When the appellant thereafter refused to respond to C.P.'s communications, C.P. came to believe that the appellant had no intention to repay the remaining \$8,000. Therefore, on October 11, 2012, C.P. filed a civil complaint against the appellant to recover the

<sup>1</sup> Agency records indicate that the appellant was laid off from the title of Head Cook, with the appointing authority effective November 30, 2012.

remaining funds. The matter was settled on February 1, 2013, and it was agreed that the appellant would pay C.P. \$50 per month until all of the remaining funds were returned. The appointing authority asserted that the appellant stated during the interview process that he "embezzled" \$15,000 from C.P. in 2008. It averred that the appellant violated C.P.'s rights in that C.P. was incarcerated, had no control over his financial accounts, and relied upon the appellant's honesty. It also stated that the appellant would have direct, daily contact with inmates if appointed. Finally, the appointing authority maintained that it could not depend on the appellant to serve in a supervisory capacity due to his dishonesty and lack of moral principles, which jeopardized the respect required for a supervisory employee.

On appeal to CPM, the appellant argued that although he was "guilty of poor judgment," C.P. had given the appellant written permission to use C.P.'s funds but later filed a civil complaint because the appellant was not paying C.P. back quickly enough. In support, the appellant submitted a letter from C.P., who wrote:

Mike I do remember saying to you that it's OK to use my card for whatever you need I am not upset – don't even think of it. If the money is gone well so be it, call my sisters or email them and explain the situation I'm sure we can work something out . . . I'm going to say again I am not upset we will talk about the money when I get out.

CPM found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant states that he and C.P. reached a settlement and that he is paying C.P. \$50 per month in accordance with the agreement. The appellant notes that he has never been indicted for any crime. He reiterates that C.P. allowed the appellant to use the funds. Finally, the appellant argues that he was paying C.P. back prior to C.P.'s filing of the civil complaint.

The appointing authority, despite being provided the opportunity, did not present any arguments or documentation for the Commission's review.

## CONCLUSION

*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, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine.

*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. *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 an appointing authority's decision to remove his or her name from an eligible list was in error.

Although the appointing authority referenced embezzlement in its request to remove the appellant from the subject special reemployment list, it must be noted that there is no documentation in the record indicating that the appellant has ever been charged with or convicted of any crime.

However, the record does indicate that a civil complaint was filed against the appellant, and was settled. As a result, the appellant is required to make a fixed monthly payment under the terms of the agreement reached. The appellant's obligation to make payments under the settlement could be considered akin to an appellant's credit history, and it is noted that a candidate's negative credit history, in and of itself, is not a sufficient basis upon which to remove that candidate's name from an eligible list. See *In the Matter of Alana Farrow* (MSB, decided October 1, 2003); *In the Matter of Danielle Bonassisa* (MSB, decided August 12, 2003); and *In the Matter of Christopher Starkey* (MSB, decided July 17, 2002). Moreover, while the position is in a correctional facility, the position in question is not a law enforcement title and is not subject to a heightened standard of review. Compare *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966); and *In re Phillips*, 117 *N.J.* 567 (1990). Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the special reemployment list for Cook, Sussex County.

**ORDER**

Therefore, it is ordered that this appeal be granted and Michael Falcaro's name be restored to the special reemployment list for Cook, Sussex County. Absent any disqualification issue ascertained through an updated background check, the appellant's appointment is otherwise mandated. Additionally, it is ordered that if the appellant is appointed, his record will reflect a retroactive appointment date of January 23, 2013 for salary step placement and seniority-based purposes only.

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 19<sup>TH</sup> DAY OF NOVEMBER, 2014**

*Robert E. Brenner*

**Robert E. Brenner  
Member  
Civil Service Commission**

**Inquiries  
and  
Correspondence**

**Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, NJ 08625-0312**

**Attachment**

- c. **Michael Falcaro  
John Eskilson  
Kenneth Connolly  
Joseph Gambino**



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION

DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

Robert M. Czech  
Chair/Chief Executive Officer

February 24, 2014

Michael A. Falcaro

Title: Cook  
Symbol: SPECIAL  
Jurisdiction: Sussex County  
Certification Number: OL130118  
Certification Date: 01/23/13

**Initial Determination: Removal – Unsatisfactory background report**

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. N.J.A.C. 4A:4-4.7(a)11*, which permits the removal of an eligible's name from an employment list for other valid reasons as determined by the Commissioner such as an unsatisfactory employment record.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Michael A. Falcaro  
Page 2

Henry Maurer, Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Director,



Barbara Bickel  
Human Resource Consultant

c: John Eskilson, Administrator  
Sussex County Administration Building  
1 Spring Street  
Newton, NJ 07860