

B-14



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael Ngo,  
Police Officer (Special), Trenton

CSC Docket No. 2014-1579

List Removal Appeal

ISSUED: **AUG 01 2014** (WR)

Michael Ngo 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 Police Officer, Trenton, on the basis of having an unsatisfactory background report.

The appellant, a nonveteran, appeared on the Police Officer, Trenton, special reemployment eligible list and was certified to the appointing authority on August 1, 2012.<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 upon investigation of the appellant's background, adverse items were discovered which precluded him from appointment as a Police Officer. In this regard, it was found that, while employed with the South Brunswick Police Department (following his layoff from Trenton), the appellant had made false statements during an internal affairs investigation after he improperly conducted a traffic stop and had received sexual harassment training after he made an unwanted advance to a female Communications Dispatcher. Moreover, it indicated that the appellant resigned in lieu of termination for making the false statement.

The appellant appealed to CPM and denied any wrongdoing. He asserted that he only asked for the Communication Dispatcher's telephone number as an

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<sup>1</sup> Agency records indicate that the appellant was employed with the appointing authority as a Police Officer from March 26, 2007 to September 16, 2011.

alternative means to contact her if necessary. The appellant claimed that when he served as a Police Officer in Trenton, it was common practice to ask for a dispatcher's personal telephone number. He also asserted that he did not know what false statements he allegedly made during the internal affairs investigation and requested the internal affairs investigation report. After the appointing authority provided the appellant with a memorandum<sup>2</sup> that broadly detailed the sexual harassment incident and the internal affairs investigation in which he allegedly made false statements, the appellant acknowledged that he made a mistake during the traffic stop, but maintained that he did not make any false statements during the investigation. Specifically, the memorandum stated that the appellant turned off his microphone during the traffic stop so that his conversation with the driver and the passengers could not be heard. Based on the record, CPM determined that the appointing authority had presented a sufficient basis to remove the appellant's name from the subject eligibility list.

On appeal to the Civil Service Commission (Commission), the appellant maintains that the appointing authority's allegations are untrue. He states that he was never "informed that [he] was accused of sexual harassment" and denies making false statements during the internal affairs investigation. The appellant reiterates that he has not "been provided with any documentation that substantiates" these allegations, and therefore, unless he is provided with specific details of his alleged false statements and sexual harassment, he is unable to provide a rebuttal. However, the appellant does admit that he did not follow the proper procedures during the aforementioned traffic stop. Regarding the memorandum provided by the appointing authority that broadly detailed the allegations, the appellant contends that the individual from the South Brunswick Police Department to whom the appointing authority spoke was not present during the internal affairs investigation. Accordingly, the appellant requests a hearing. However, the appellant acknowledges that following the internal affairs investigation, he "resigned as requested."

Despite the opportunity, the appointing authority did not submit any arguments.

## CONCLUSION

*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

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<sup>2</sup> Per the relevant New Jersey Attorney Guidelines, materials that result from an internal affairs investigation may only be released in the event there is a hearing on administrative charges, if the subject officer or agency was named in a lawsuit arising out of the specific incident covered by the internal investigation, at the direction of the Attorney General or the County Prosecutor or upon a court order.

list was in error. *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)7*, allows the Commission to remove an individual from an eligible list who has a prior employment history which relates adversely to the position sought. The Commission has removed candidates from eligible lists under circumstances where the candidate, in his or her prior employment, resigned while disciplinary charges were pending or resigned in good standing in lieu of discipline and had a prior disciplinary history. For example, in *Strasser v. Camden County* (MSB, decided May 28, 1992), the Board upheld the removal of an eligible from an open competitive list based on the eligible's employment history which showed that he had resigned while disciplinary charges imposing a removal were pending. Moreover, in *In the Matter of Darren Grossman* (MSB, decided January 17, 2001), the Board found that the appellant's employment history as a Police Officer with Jackson Township (Jackson) was sufficient to remove him from the Police Officer, Township of Marlboro, eligible list since he resigned in good standing in exchange for Jackson not proceeding with disciplinary charges. The appellant's past employment record also reflected a three-day suspension as a Police Officer with East Orange. Similarly, in *In the Matter of Ralph Lubin* (MSB, decided May 8, 2001), the appellant's termination was recorded as a resignation in good standing as a result of a settlement agreement, whereby the appointing authority did not recommend or institute criminal proceedings against the appellant in exchange for the appellant resigning in good standing and withdrawing his grievance. The appellant's prior disciplinary history also included a five-day suspension. Compare, *In the Matter of Dennis Alba* (MSB, decided January 17, 2001). In *Alba, supra*, the Board restored the appellant's name to the Investigator Probation, Camden County Vicinage, eligible list on the basis that he did not have an adverse employment history. In so finding, the Board noted the significance of the terms of the settlement agreement, wherein the appointing authority agreed to the withdrawal of the pending disciplinary charges.

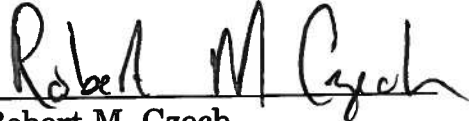
In the instant matter, the record reveals that the appellant resigned in lieu of removal with the South Brunswick Police Department. Specifically, the record reveals that the appellant failed to follow the South Brunswick Police Department's procedure during a traffic stop by turning off his microphone so that his conversation with the driver and his occupants could not be heard. Subsequently, an internal affairs investigation was conducted, which sustained findings that the appellant made false statements during the investigation. Thereafter, given the choice of resigning or being terminated, the appellant resigned. Although the record is silent as to whether the appellant had received any other discipline during his employment with the South Brunswick Police Department, his admitted failure to follow proper procedures during the traffic stop and his resignation in lieu of termination are troubling considering the nature and location of the position sought. Accordingly, based on the foregoing, there is a sufficient basis in the record to remove his name from the Police Officer, Trenton special reemployment 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 30<sup>th</sup> DAY OF JULY, 2014**

  
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Civil Service Commission

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**Attachment**

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