



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Alexis Miller, Family
Service Supervisor (PC0530N), Essex
County

Request for Reconsideration

CSC Docket No.2014-2467

ISSUED: **AUG 14 2014** (SLD)

Alexis Miller requests reconsideration of the attached final administrative decision, rendered on February 26, 2014, which upheld the appointing authority's request to remove her name from the eligible list for Family Service Supervisor (PC0530N),¹ Essex County.

In its prior decision, the Civil Service Commission (Commission) noted that in disposing of the April 26, 2012 certification, the appointing authority requested that the appellant's name be removed from the eligible list on the basis of an unsatisfactory employment record as she had received a 30-day suspension effective March 9, 2012, for conduct unbecoming a public employee, other sufficient cause and violation of Essex County Policies and Procedures. On appeal, the appellant contended that the former Director of Welfare and the Director of Human Resources indicated to her that they did not request her removal from the eligible list. The appellant also argued that she had served her suspension and completed her probationary period, and she should be afforded the opportunity to become a supervisor. In response, the appointing authority noted that the Office of Human Resources did not make or influence any hiring decisions and only advised the department filling the position about Commission rules and regulations. In denying the appellant's appeal, the Commission found that the appellant's disciplinary history clearly related adversely to the title sought, Family Service Supervisor. In this regard, it noted that supervisors are held to a higher standard of conduct and the serious nature of the charges coupled with the recent nature of the disciplinary

¹ The subject eligible list expires on April 11, 2015.

action demonstrated a lack of judgment needed to be a supervisor. Despite the appellant's arguments to the contrary, the Commission noted that an employee's disciplinary history may be considered in making an appointment. See *N.J.A.C. 4A:4-4.7(a)1*, *N.J.A.C. 4A:4-6.1(a)7* and *N.J.A.C. 4A:4-6.1(a)9*. Moreover, the appellant received the 30-day suspension *one* month prior to the promulgation of the subject eligible list.

In her request for reconsideration, the appellant argues that the Commission erred in upholding her removal from the subject eligible list. Specifically, she asserts that neither the Preliminary nor the Final Notice of Disciplinary Action (FNDA) indicated that her removal from the subject eligible list was being sought.

In response, the appointing authority asserts that the appellant was removed from the subject eligible list due to her unsatisfactory employment record. However, it notes that subsequent to that removal, the appellant has received positive employee evaluations, and thus, it requests that the appellant's name be restored for prospective employment opportunities only.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record in the instant matter reveals that, although the appellant has not met the standard for reconsideration, given the new evidence submitted by the appointing authority, namely, its request that the appellant's name be added back to the list, the Commission finds a basis to modify its prior decision.

Initially, it is noted that the appellant argues that the Commission erred in upholding her removal, since the FNDA did not indicate she was to be removed from the subject eligible list. However, it is noted that the FNDA was merely provided in support for the appointing authority's assertion that the appellant had an unsatisfactory employment record. Rather, the appointing authority indicated on the April 26, 2012 certification that the certification disposition code for the appellant was "R1," "Remove, unsatisfactory employment record. As noted in the previous decision, it is clearly within the appointing authority's discretion to consider a candidate's disciplinary record in determining whether to remove a candidate's name from an eligible list. See *e.g., In the Matter of John Bonafide*, Docket No. A-1658-04T1 (App. Div. February 7, 2006) (Removal from Sheriff's Officer Lieutenant promotional list upheld for Sheriff's Officer Sergeant who received a six-month suspension for misuse of public property three months prior to the certification of his name for appointment). Therefore, the appellant's name was

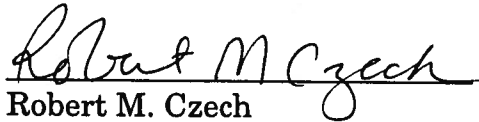
properly removed from the subject eligible list. However, since the appointing authority has requested that her name be restored for prospective employment opportunities, it is appropriate to restore her name to the subject eligible list.

ORDER

Therefore, it is ordered that this request for reconsideration be granted and Alexis Miller's name be restored to the eligible list for Family Service Supervisor (PC0530N), Essex County for prospective employment opportunities 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 13TH DAY OF AUGUST, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Alexis Miller
Alan Abramowitz
Kenneth Connolly
Joseph Gambino

appointing authority had presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant contends that both Yvonne Davis, former Director of Welfare,² and Alan Abramowitz, Director of Human Resources, have indicated to her that they did not request the appellant's removal from the eligible list. The appellant also asserts that David Weiner, her union representative, never contacted Abramowitz to assist her with her list removal appeal. In support, the appellant submits emails between herself and Weiner and between Weiner and Davis. The appellant asserts that she served her suspension and completed her probationary period, so she should be afforded the opportunity to become a supervisor. The appellant adds that she has "paid [her] debt to society and just want[s] a fair chance like everyone else."

In response, the appointing authority notes that the Office of Human Resources does not make or influence any hiring decisions and only advises the department filling the position about Commission rules and regulations.

CONCLUSION

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. *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. Further, *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. It is noted that it is the responsibility of the appointing authority to dispose of certifications and it may remove or bypass individuals based on their adverse employment histories.

Thus, it is clearly within the appointing authority's discretion to consider a candidate's disciplinary record in determining whether to remove a candidate's name from an eligible list. See e.g., *In the Matter of John Bonafide*, Docket No. A-1658-04T1 (App. Div. February 7, 2006) (Removal from Sheriff's Officer Lieutenant promotional list upheld for Sheriff's Officer Sergeant who received a six-month suspension for misuse of public property three months prior to the certification of his name for appointment); *In the Matter of Howard Doherty, Correction Sergeant*,

² Ms. Davis retired on October 1, 2013.

Department of Corrections (PS7099I), Docket No. A-4959-01T1 (App. Div. April 5, 2004) (Removal from Correction Sergeant promotional list upheld for Senior Correction Officer with 25 minor disciplinary actions, 24 of which were imposed for attendance-related infractions); *In the Matter of Frank R. Jackson, Correction Lieutenant, Department of Corrections (PS6320I)*, Docket No. A-1617-00T2 (App. Div. March 28, 2002) (Removal from Correction Lieutenant promotional list upheld for Correction Sergeant whose disciplinary record included two official reprimands for absenteeism and a 30-day suspension for falsification of a report, despite the recommendation of his immediate supervisor); *In the Matter of Albert S. Waddington, County Correction Sergeant (PC0349T), Camden County*, Docket No. A-568-99T2 (App. Div. December 5, 2000) (Removal from County Correction Sergeant promotional list upheld for County Correction Officer with a lengthy list of counseling reports, poor evaluations, reprimands, minor disciplinary sanctions and two major disciplinary actions over approximately 13 years). In addition, it is noted that the appellant is precluded from re-litigating her prior discipline since it was resolved via settlement agreement. See *In the Matter of Joseph Poplawski, Sheriff's Officer Sergeant (PC3017C), Burlington County*, Docket No. A-5359-06T5 (App. Div. May 30, 2008) (Appellant barred from relitigating the sufficiency of earlier charges brought against him that was utilized to support the removal of his name from a subsequent promotional list since that matter was resolved via a settlement of that issue).

In the instant matter, the appointing authority removed the appellant's name from the subject eligible list based solely on an unsatisfactory employment record. It has submitted documentation relating to a major disciplinary action of a 30 day suspension for conduct unbecoming a public employee, other sufficient cause and violation of Essex County Policies and Procedures to support its decision to remove the appellant's name from the list. The appellant's disciplinary history clearly relates adversely to the title sought, Family Service Supervisor. In this regard, supervisors are held to a higher standard of conduct and the serious nature of the charges coupled with the recent nature of the disciplinary action demonstrate a lack of judgment needed to be a supervisor. The appellant contends that she is being held accountable for a past disciplinary action for which she has already served a penalty. The Commission does not agree. As discussed above, a candidate's disciplinary record may be considered. Moreover, the appellant received a 30-day suspension *one* month prior to the promulgation of the subject eligible list. Therefore, it is appropriate to consider it when reviewing the appellant's employment history. The Commission notes that the appellant does not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Accordingly, based on the foregoing, the Commission finds that the appellant's employment history

constitutes sufficient cause to remove her name from the eligible list for Family Service Supervisor (PC0530N), Essex County.

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 26th DAY OF FEBRUARY, 2014

Robert Brenner

Robert E. Brenner
Presiding Member
Civil Service Commission

Inquiries
and
Correspondence:

Henry Maurer
Director
Division of Appeals
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Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Alexis Miller
Alan Abramowitz
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

May 24, 2013

Alexis T. Miller

Title: FAMILY SERVICE SUPERVISOR
Symbol: PC0530N
Jurisdiction: ESSEX COUNTY
Certification Number: PL120529
Certification Date: APRIL 26, 2012

Initial Determination: Removal – Unsatisfactory employment record

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. 4A:4-6.1(a)9*, which permits the removal of an eligible candidate's name from the eligible list for 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:

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

Sincerely,
For the Director,



Cheryl Andrews
Human Resource Consultant 2

c: Alan Abramowitz