

"on Seclusion and Observation." While attempting to get the patient back into his room, the appellant states that he extended his arm to distance himself from the patient. The appellant claims that while he made contact with the patient, he did not abuse him. Moreover, the appellant claims that no other staff member viewed his actions as abuse. Additionally, the appellant argues that he acted in accordance with his training and such interactions with "dangerously aggressive" patients are routine. The appellant also contends that the appointing authority's report on the matter found that the patient was "illogical and disoriented with time." For example, the appellant notes that the patient claimed that an unnamed officer used "lethal force" on him. The appellant also notes that the patient did not report the alleged abuse until two days after the incident. Furthermore, the appellant states that after the incident, he continued to work in the same unit as the patient and contends that if he had truly abused the patient, he would have been separated from the patient. Nevertheless, the appellant states that he was not disciplined for the incident and notes that he never received a Preliminary or Final Notice of Disciplinary Action.⁴ He asserts that the Director of the medical security department did not intend to remove his name from the subject eligible list. Finally, the appellant asserts that he was employed at Ann Klein for approximately three years and his performance was commendable, mostly for his ability to manage and defuse disruptive behavior. In support, the appellant submits a letter of support from his aunt who is a Supervising Medical Security Officer with the appointing authority.

In response, the appointing authority asserts that the allegation of physical abuse against a patient was sustained after an investigation was conducted, which included monitoring video surveillance and gathering statements from the patient and staff. The appointing authority states that because the appellant was a temporary, at-will employee, he was terminated without going through the disciplinary process. Finally, the appointing authority contends that even though the appellant's supervisor supports his appeal, it has a zero tolerance policy against abuse and cannot overturn any investigative findings/reports which have included administrative review. In support, the appointing authority submits a copy of its policy against patient abuse and a copy of the investigative report concerning the allegation of abuse in this matter. The report most notably includes a detailed account of the video surveillance of the incident and describes the appellant as having appeared to push the patient back into his room.⁵

CONCLUSION

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

⁴ As a non-permanent employee, the appointing authority was not required to issue these notices.

⁵ However, the individuals interviewed in the report state that they did not witness the appellant abuse the patient.

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.

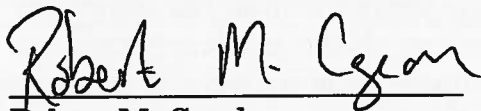
The record reflects that while working at the Ann Klein Forensic Center, it was alleged that the appellant abused a patient. As a result, the appointing authority conducted an investigation which confirmed the allegation. Because he was a temporary, at-will employee, he was terminated and therefore not afforded an opportunity to challenge the allegation through the disciplinary process. In the instant matter, the appellant disputes the appointing authority's allegations and there are conflicting accounts of the incident in the investigative report. Under this scenario, an individual would usually be entitled to a hearing as there is a dispute of fact. *See In the Matter of Wiggins, 242 N.J. Super. 342 (App. Div. 1990)*. However, a hearing is not required in this matter because even if the appellant is successful in showing he was not liable for any of the actions alleged, his name could be bypassed for appointment. In this regard, the appellant was not reachable for appointment on the August 26, 2013 certification, as no eligible below rank 48 was appointed and the appellant was ranked 62. Nevertheless, the record indicates that on the following certifications (OS140084 and OS140438) he would have been reachable and could have been bypassed without any violation of the Rule of Three. Accordingly, while the Commission finds insufficient reason to remove the appellant's name from the Medical Security Officer Recruit (S2191N), Department of Human Services eligible list, and restores his name to the August 26, 2013 certification, his name should be recorded as interested but not reachable for appointment on that certification. Additionally, it finds that his background provides sufficient cause to record him as bypassed on the OS140084 and OS140438 certifications.

ORDER

Therefore, it is ordered that this appeal be granted, but that the appellant's name be recorded as interested but not reachable for appointment on the August 26, 2013 certification for Medical Security Officer Recruit (S2191N), Department of Human Services. Additionally, it finds that his background provides sufficient cause to record him as bypassed on the OS140084 and OS140438 certifications of that list.

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 19th DAY OF MAY, 2015**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

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

Attachment

**c: Jeffrey Randall
Anne Kenyon
Kenneth Connolly**



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
Division of Classification & Personnel Management
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Office

February 16, 2014

Jeffrey Randall

Title MEDCL SECURITY OFCR RCRUT

Symbol: S2191N

Jurisdiction: ANN KLEIN FORENSIC CENTER

Certification Number: OS130574

Certification Date: 08/26/2013

Initial Determination: Removal – Good cause as established by the Appointing Authority

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:4-7.1 11(b), which permits the removal of an eligible candidate's name from the eligible list for other valid reasons as determined by the Chairperson of the Civil Service Commission or designee.

(b) An appointing authority that requests removal of an eligible's name from a list shall submit to an appropriate representative of the Civil Service Commission, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request.

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.

Jeffrey Randall

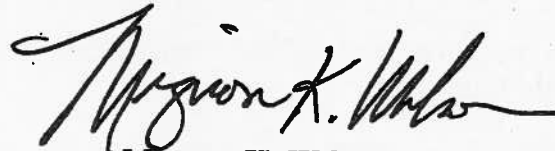
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Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons 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
Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,

For the Assistant Director, Joe Hill Jr.



Mignon K. Wilson
Human Resource Consultant