

CSC

B-11



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Andrew Bisciegliia,
Fire Captain (PM5208N), Atlantic
City

CSC Docket No. 2014-2588

Bypass Appeal

ISSUED: **JUL 20 2015** (EG)

Andrew Bisciegliia, a Fire Fighter with Atlantic City, appeals the bypass of his name on the August 19, 2013, certification of the eligible list for Fire Captain (PM5208N), Atlantic City.

The appellant, a veteran, appeared on the promotional list for Fire Captain (PM5208N), Atlantic City, which promulgated on December 20, 2012 and expires on December 19, 2015. The list was certified on August 19, 2013, with the appellant as the number one ranked eligible. In disposing of the certification, the appointing authority indicated the bypass of the appellant's name due to an unsatisfactory employment record and appointed the second and third ranked candidates. The appellant appealed his bypass to the former Division of Classification and Personnel Management¹, which upheld the appointing authority's decision to bypass his name on the certification.

It is noted that the record reflects that the appellant was issued a Preliminary Notice of Disciplinary Action (PNDA) on April 30, 2013. The appellant was subsequently removed effective August 19, 2014 and he appealed that matter to the Civil Service Commission (Commission), which transmitted his appeal to the Office of Administrative Law (OAL) for a hearing. The Administrative Law Judge dismissed charges relating to falsifying a letter but upheld charges regarding the violation of sick policy rules and the charge of neglect of duty. The ALJ recommended the reduction of the removal to a five working day suspension. Upon

¹ Now the Division of Agency Services.

a *de novo* review, the Commission agreed with the ALJ's determination of the charges but determined that a 45 working day suspension was the proper penalty. In this regard, the Commission found that the appellant had knowingly violated the sick policy and was "double-dipping" government funds. See *In the Matter of Andrew Bisciegli, City of Atlantic City* (CSC, decided April 15, 2015).

In the instant matter, the appellant argues that the disciplinary charges brought against him were based on an investigation conducted by the military. The appellant claims that the military decided not to pursue the charges and that he submitted a letter of resignation from the military. The appellant also claims that he had not been found guilty of anything prior to the bypass of his name. Additionally, the appellant argues that as a veteran heading a certification he could not have been bypassed for appointment. Further, he contends that while the appointing authority claims that it is not its practice to promote individuals with pending major discipline, it has promoted individuals with major and minor disciplinary records. In support of this contention, the appellant submits a letter dated October 2007 from a Fire Chief requesting that a candidate be bypassed for promotion. The appellant claims that the individual referenced in the letter was promoted.

In response, the appointing authority, represented by Anthony A. Swan, Esq., Assistant City Solicitor, argues that it is its practice not to promote individuals with pending major disciplinary charges. It maintains that the seriousness of the appellant's misconduct called for bypassing him for promotion. In this regard, it asserts that the appellant forged the name of a military superior in order to obtain financial gain. The appointing authority states that the bypass of the appellant was not only justified but was necessary to maintain the integrity of the fire department.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Additionally, *N.J.A.C.* 4A:5-2.2(c) provides that when a single vacancy is to be filled from a promotional certification headed by a veteran, any veteran among the top three interested eligibles may be appointed in accordance with the "rule of three." A nonveteran shall not be appointed unless the appointing authority shows cause why the veterans should be removed from the promotional list. Further, *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. Moreover, *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.

In the instant matter, the certification returned by the appointing authority in August 2013 indicated that the appellant was being bypassed due to an unsatisfactory employment record. However, the appellant was a veteran ranked first on the subject certification. As such, pursuant to *N.J.A.C. 4A:5-2.2(c)*, the appellant could not be bypassed and the certification should have been returned to the appointing authority for the proper disposition. As the appellant had been subject to major disciplinary action, a proper disposition could have been the removal of the appellant's name. It is this disposition that the Commission finds appropriate in the present matter. The position of Fire Captain, like that of a Police Sergeant, is reserved for employees who exhibit leadership skills, a positive work ethic, and respect for the rules in regulations. Thus, a disciplinary history that includes a major disciplinary action reflects serious offenses and shows a lack of respect for such tenets. *See In the Matter of Wayne Hundemann* (MSB, decided May 10, 2006).

Clearly, the appellant's disciplinary matter provides an employment history which relates adversely to the position sought. The appellant was found by the Commission to have knowingly violated the appointing authority's sick policy and of "double-dipping" government funds. These are serious actions. Additionally, the appellant was suspended for 45 working days based on charges that were issued a mere four months prior to the issuance of the subject certification. *See 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, 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).

Further, the Commission is ever mindful of the high standard placed on a Fire Fighter. The New Jersey Supreme Court in *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998), stated:

Firefighters are not only entrusted with the duty to fight fire; they must also be able to work with the general public and other municipal employees, especially police officers, because the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship places at risk the citizens of the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police departments at a fire.

In addition, while the appellant claims that others have been appointed while having disciplinary action in their employment records, a review of official records reveals that the appellant and the individual mentioned in the letter submitted by the appellant were not similarly situated. The individual in question had one major disciplinary action on his record, a 15 working day suspension. The appellant's suspension was for 45 working days and at the time of the removal of his name, the appointing authority was seeking his termination from employment. Therefore, due to the timing of the disciplinary actions and the wide difference in the major disciplinary action taken, the appellant and this individual were not similarly situated employees.

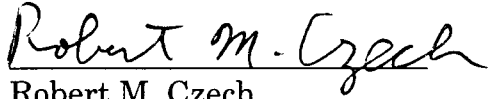
Accordingly, based on the foregoing, the Commission finds that the appellant's name should be removed from the Fire Captain (PM5208N), Atlantic City eligible list. Records should be amended to show that the appellant's name was removed from the August 19, 2013 certification of the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be denied, and that Andrew Bisciegli's name be removed from the Fire Captain (PM5208N), Atlantic City eligible list in accordance with this decision.

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 15TH DAY OF JULY, 2015



Robert M. Czech
Chairperson
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, New Jersey 08625-0312

Attachment

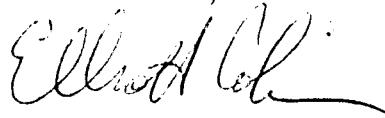
c: Andrew Bisciegia
Anthony A. Swan, Esq.
Jason Holt, Esq.
Kenneth Connolly
Joseph Gambino

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 (C44:10-55 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 Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Elliott Cohen
Human Resource Consultant
Certifications Unit

C: Donald Guardian

Donald Guardian
City of Atlantic City
1301 Bacharach Blvd
Atlantic City, NJ 08401

