



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Lisa Brown, Family
Service Specialist 1 (PS2267K),
Department of Children and Families

CSC Docket No. 2018-1507

Request for Reconsideration

ISSUED: APRIL 23, 2018 (CSM)

Lisa Brown, a Family Service Specialist 2 with the Department of Children and Families (DCF), represented by Manuel B. Oasin, Esq., requests reconsideration of the attached decision rendered on October 4, 2017, which upheld the removal of her name from the eligible list for Family Service Specialist 2 (PS2267K), on the basis of an unsatisfactory employment record.

By way of background, in disposing of the September 22, 2016 certification, DCF removed the appellant’s name from the list due to an unsatisfactory employment record. Specifically, it indicated that the appellant had received a 10-day suspension on charges of incompetency, inefficiency, conduct unbecoming a public employee, neglect of duty and other sufficient cause. The appellant appealed the matter to the Civil Service Commission (Commission), which found that since the appellant received major discipline on March 18, 2014, which was within a relatively recent timeframe from the issuance of the list, it was appropriate for the appointing authority to consider it when reviewing the appellant’s employment history. Therefore, the Commission found that her adverse employment history consisted sufficient cause to remove her name from the subject list.

On reconsideration, the appellant states the appointing authority indicated it removed her name from the list based on a long standing administrative policy concerning an eligible who receive major discipline within three years of the establishment of the list. However, as this was not the reason stated at the time her name was removed from the list, the appellant argues that “she could not defend against it.” Additionally, the appellant presents that “long standing

administrative policy” is not one of the enumerated reasons in *N.J.A.C.* 4A:4-4.7 as a basis to remove an eligible’s name from the list.

Although provided the opportunity, the appointing authority did not submit any additional information or argument for the Commission to review.

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.

N.J.A.C. 4A:4-6.1(a)7 states that an eligible may be removed from the list who has a prior employment history which relates adversely to the title. *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 present matter, the appellant has not met the standard for reconsideration. Although the appellant argues that *N.J.A.C.* 4A:4-4.7 does not state that “long standing administrative policy” is not one of the enumerated reasons to support a list removal, *N.J.A.C.* 4A:4-4.7(a)1 clearly states that an eligible may be removed from the list based on the causes for disqualification listed in *N.J.A.C.* 4A:4-6.1. As noted above, *N.J.A.C.* 4A:4-6.1(a)7 states that a person may be denied appointment who has a prior employment history which relates adversely to the title. Although she claims that she was not apprised at the time of her removal from the list it was based on a “long standing administrative policy” in order for her to provide a defense, the appointing authority’s policy of removing individuals based on a major disciplinary sanction is clearly prior employment history that can relate adversely to the title. Since the appellant acknowledged in her initial appeal that she was contesting the removal of her name “solely due to an unsatisfactory employment record,” she was clearly aware of the basis the appointing authority was utilizing to support its request. Accordingly, the appointing authority presented sufficient cause to remove the appellant’s name from the subject list.

ORDER

Therefore, it is ordered that this request for reconsideration 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
18TH DAY OF APRIL, 2018



Deirdre L. Webster Cobb
Chairperson
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Attachment

c: Lisa Brown
Manuel B. Oasin, Esq.
Linda M. Dobron
Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Lisa Brown,
Family Services Specialist 1 (PS2267K),
Department of Children and Families

CSC Docket No. 2017-2559

List Removal Appeal

ISSUED: **OCT 05 2017** (EG)

Lisa Brown, a Family Services Specialist 1 with the Department of Children and Families (DCF), represented by Manuel B. Oasin, Esq., appeals the decision of DCF to remove her name from the Family Services Specialist 1 (PS2267K), eligible list due to an unsatisfactory employment record.

The subject eligible list was promulgated on July 28, 2016 and expires on July 27, 2019. The appellant's name was certified on September 22, 2016, and her name was removed by DCF for an unsatisfactory employment record. Specifically, the DCF indicated in the supporting documentation attached to the certification that following mediation the appellant had received a 10-day suspension on charges of incompetency, inefficiency, conduct unbecoming a public employee, neglect of duty and other sufficient cause. It submitted a copy of the Final Notice of Disciplinary Action (FNDA) dated March 28, 2014 and a copy of the Mediation Disposition dated January 21, 2016.

On appeal, the appellant argues a lack of due process as the appointing authority did not place her on notice that the removal of her name was based on past practice and long-standing administrative policy, and she did not have the opportunity to respond to that allegation. Additionally, she contends that the disciplinary action in question occurred over three prior to the establishment of the list. The mediation, which concluded in January 2016, reduced her penalty from 15 days to 10 days and awarded her five days of back pay. Further, the appellant argues that in *In the Matter of Alexis Miller* (CSC, decided August 13, 2014), Miller's name was restored to a Family Services Supervisor eligible list despite a

30-day suspension on her record because the appointing authority requested that her name be restored. In this regard, the appellant argues that Miller's name was removed from the eligible list one and one-half months after the imposition of her discipline while she was removed 39 months after the imposition of her discipline. Thus, she claims that she should be restored to the subject eligible list.

In response, the appointing authority states that its past practice and long standing administrative policy is that a major discipline sanction serves as a bar from an eligible list for three years. It indicates that the appellant received an FNDA dated March 18, 2014 and that the eligible list was established July 28, 2016. Further, the appointing authoring contends that *Miller, supra*, was for a local jurisdiction and it is not binding on DCF.

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 removal an individual from an eligible list who has a prior employment history which relates adversely to the position sought. *N.J.A.C. 4A:4-6.3(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.

Initially, the Civil Service Commission (Commission) notes that it is not bound by criteria utilized by the appointing authority and must decide each list removal appeal on the basis of the record presented. *See In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005), and *In the Matter of Debra Dygon* (MSB, decided May 23, 2000). As such, DCF's past practice or long standing administrative policies do not determine whether the Commission can restore or remove an eligible's name from a list.

In the instant matter, the appellant's name appeared on the September 22, 2016, certification of the subject eligible list. The appointing authority removed the appellant's name from the subject eligible list due to her receiving a major discipline on March 18, 2014 and that the eligible list was established July 28, 2016. The FNDA and Mediation Disposition indicated that the appellant had received a 10-day suspension on charges of incompetency, inefficiency, conduct unbecoming a public employee, neglect of duty and other sufficient cause. The appellant argues that the discipline occurred at least three years prior to the establishment of the list. The Commission does not agree with this assessment. The FNDA was dated March 18, 2014 and the eligible list was promulgated on July 28, 2016. The FNDA and the promulgation of the subject eligible list are clearly less than three years apart. In this regard, the Commission notes that the appellant's disciplinary action occurred within a fairly recent timeframe and it is appropriate to consider it when reviewing the appellant's employment history. Moreover, the appellant's

disciplinary history clearly relates adversely to the title sought, Family Services Specialist 1. *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, 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).

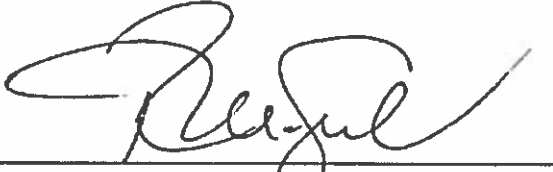
Further, the Commission finds that *Miller, supra*, is easily distinguishable from the present matter. In *Miller*, the Commission emphasized that it was in the appointing authority's discretion to consider a candidates disciplinary record in determining whether to remove candidates name from an eligible list. Thus, it found that Miller's name was properly removed from the list. In *Miller*, the appointing authority exercised its discretion when it requested that Miller's name be restored after she received positive evaluations after her name was removed from the list. The appointing authority in this matter has made no such request. Rather, in its discretion and in compliance with *N.J.A.C. 4A:4-4.7(a)*, the appointing authority determined that the appellant's receipt of major disciplinary less than three years prior to the promulgation of the subject list adversely related to the position sought. 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 Services Specialist 1 (PS2267K), Department of Children and Families.

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 4TH DAY OF OCTOBER, 2017



Robert M. Czede, Chairperson
Civil Service Commission

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