

**STATE OF NEW JERSEY**

In the Matter of Ana Trejo, Police Officer (S9999A), Union City : **FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

CSC Docket No. 2022-1785 : Reconsideration

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ISSUED: MAY 23, 2022 (SLK)

Ana Trejo, represented by Annette Verdesco, Esq., requests reconsideration of *In the Matter of Ana Trejo* (CSC, decided December 15, 2021) where the Civil Service Commission (Commission) denied her appeal to remove her name from the Police Officer (S9999A), Union City eligible list on the basis of an unsatisfactory employment record.

By way of background, Trejo's name was removed from the Police Officer (S9999A), Union City eligible list on the basis of an unsatisfactory employment record. Specifically, the record indicated that Trejo had continuous employment discipline between 2012 to 2018, including a major discipline where she acknowledged in a settlement that she violated various administrative rules for behavior that ended less than one year prior to the August 31, 2019 closing date. Trejo argued that her removal was unjust because her minor disciplines were either unfair, involved one-time occurrences, and/or were to be removed from her file based on department policy and her major discipline was settled where the parties agreed not to present it in any forum except a subsequent disciplinary proceeding. She also asserted that others with similar or more series disciplinary histories or criminal violations were hired by the Police Department. However, the Commission found that Trejo's background did not meet the high standards for a Police Officer, she could not relitigate disciplines that she had the opportunity to challenge at those times, she had not presented any evidence that certain disciplines were to not be presented in proceedings such as the subject matter, and regardless, it would not be in the public's

best interest to have prior discipline automatically removed from consideration when evaluating one's candidacy for a position as a Police Officer. Therefore, it denied her appeal.

In her request for reconsideration, Trejo presents that in the initial proceeding, she certified that "based on my information and belief, other candidates for employment to the police officer position have had similar and/or more serious disciplinary and/or criminal violation, and were hired by the Department." However, the Commission failed to address her argument regarding the appointing authority's favoritism, in that it hired other individuals that had more serious disciplinary histories, or in fact, criminal violations. She presents that the purpose of the Civil Service-Act (Act) is to ensure equal employment opportunity at all levels of public service and to protect career public employees from political coercion as the Act seeks to put Civil Service positions beyond political control, partisanship and personal favoritism. Therefore, Trejo argues that the Commission committed clear material error. She contends that it "rubber stamped" the appointing authority's removal on the pretextual premise of Trejo having one major discipline of six days, one minor discipline, and three reprimands and one notice in an 11-year span of employment. Further, Trejo argues that the Commission committed material error by failing to order a hearing as there were material facts that were in dispute regarding her disparate treatment in the hiring process that could only be resolved by a fact-finding hearing. She emphasizes her claim that her prior disciplinary history did not rise to the level justifying the removal of her name and the appointing authority failed to show that said history was adverse to being a Police Officer.

In response, the appointing authority, represented by Kenneth B. Goodman, Esq., presents that Trejo admits that she received a 2013 written reprimand for chronic or excessive absenteeism, a three-day suspension in 2013 for chronic or excessive absenteeism, a 2017 performance notice for incompetency, inefficiency or failure to perform duties; a 2017 oral reprimand for chronic or excessive absenteeism; and a 2018 written reprimand for communicating or imparting confidential information to unauthorized persons and for accessing her police supervisor's mailbox and reading an official police document addressed to the supervisor. Additionally, between May 22, 2018 and October 19, 2018, Trejo sent a supervisor approximately 370 text messages that stated that she desired to "fuck up and trash his car" and to seek "justice." Further, the appointing authority submitted documentation providing that Trejo threatened to expose a supervisor's extramarital affair to the supervisor's wife and referred to a female police officer as a "bitch." As a result, Trejo was served with a 15-day suspension that was reduced to six working days. The appointing authority indicates that Trejo does not dispute this disciplinary history, but instead, claims that it was not fair. Therefore, the appointing authority states that there is no material fact concerning her disciplinary record. It presents that Trejo, for the first time on reconsideration, claims that the appointing authority engaged in disparate treatment in the hiring process by alleging that other individuals were

hired off the list with more serious infractions and that the Commission failed to provide a hearing so that she can prove her claims. The appointing authority presents that disparate treatment involves a protected group being singled out and treated less favorably than other similarly situated based on unlawful considerations. It notes that Trejo did not identify these alleged candidates in her initial appeal or her request for reconsideration nor did she provide a reason why such information was not provided with her initial appeal. Additionally, the appointing authority highlights that Trejo has not identified what protected class the alleged disparate treatment was based on. It asserts, similar to another case that was decided by the Commission, that the appellant is using the term “disparate treatment” as a synonym for her belief that she was treated unfairly. Moreover, it contends that even if Trejo was to show that she is a member of a protected class, she has not provided any evidence that her removal was based on such membership and her request should be denied.

The appointing authority also argues that the appellant failed to demonstrate that the Commission made a clear material error. It highlights another Commission decision where the appointing authority removed an eligible due to an unsatisfactory employment history with the same appointing authority. The appointing authority presents that similarly, Trejo worked for it as a Public Safety Telecommunicator (PST) for the Police Department and she does not deny the disciplinary history as presented by it. Instead, she attempts to minimize it or contends that certain discipline should not be considered. However, it states that Trejo has not presented additional evidence that was not presented at the original proceeding and the Commission considered and rejected her arguments. Additionally, the appointing authority argues that the Commission properly denied Trejo’s request for an evidentiary hearing. It notes that list removal appeals are generally decided on the written record. The appointing authority asserts that there is no controlling disputed facts as she does not dispute her extensive disciplinary history and, therefore, has not identified an issue of fact that requires a hearing. Further, it asserts that Trejo’s substantial disciplinary history, including major discipline imposed shortly before the examination closing date, warranted her removal based on the high standards for a Police Officer.

In reply, Trejo contends that the appointing authority’s assertion that she has not provided new facts, made unsupported arguments, and has not provided new evidence that would change the outcome of the case are a “red herring” as the Commission made a material error when it failed to address her arguments that others with more serious disciplinary records and/or criminal infractions were hired/promoted based on favoritism. Additionally, she claims that no new facts needed to be presented as she was denied her request for a fact-finding hearing to resolve the disputed facts of the disparate impact claim. Further, Trejo claims that that the appointing authority is misstating facts by claiming that her disciplinary record is undisputed as she set forth the issues that she had with the subject

disciplinary history and whether said disciplinary history could be used as a reason not to promote her. Moreover, contrary to the appointing authority's argument that she is making her disparate treatment claim for the first time on reconsideration, she reiterates her certification from the initial proceeding where she stated, "...based on my information and belief, other candidates for employment to the police officer position have had similar and/or more serious disciplinary and/or criminal violation, and were hired by the Department." Therefore, she asserts that the appointing authority's claim that she is making this argument for the first time on reconsideration is unfounded.

Trejo contends that by the appointing authority arguing that she did not identify the alleged candidates who received favorable treatment in her original appeal it is conceding that she presented her disparate treatment argument in her original appeal. She explains that the names of the other candidates who were promoted instead of her were not supplied in the original appeal and on reconsideration because they were to be submitted during a fact-finding hearing. Trejo states what difference does it make in supplying the names of said candidates that were unlawfully promoted over her, with significantly worse disciplinary histories and criminal convictions, as the only benefit would be to strategically advantage the appointing authority to counter said evidence, prior to a fact-finding hearing being ordered by the Commission. Simply put, the appointing authority has full capability and power to be privy to the names of the individuals who were promoted over her including those who have DUI convictions, shoplifting convictions, trespass convictions, while others were charged and arrested for aggravated assault and another candidate received a 60-day suspension while being on the subject list. Therefore, she believes that the appointing authority's argument is meritless and senseless. Trejo argues that she has presented a *prima facie* case for disparate treatment as she is in a protected class, a Hispanic female, that was removed from the list when Caucasian and Hispanic males, with criminal convictions and a significantly worse disciplinary history were promoted over her. The appellant reiterates her belief that the Commission failed to address her argument that other candidates with criminal convictions and with significantly worse disciplinary histories were promoted over her and a fact-finding hearing is warranted to flesh the pretextual and unlawful purpose underlying the promotions by the appointing authority.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original

proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or

2. That a clear material error has occurred.

N.J.A.C. 4A:2-1.1(d) provides that except where a hearing is required by law, this chapter or *N.J.A.C. 4A:8*, or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record.

In this matter, Trejo failed to meet the standard for reconsideration as she has not presented new evidence that would change the outcome and she has not demonstrated that a clear material error occurred. Specifically, the only material facts in this case, as stated in the original proceeding, are that Trejo had continuous employment discipline between 2012 to 2018, including a major discipline where she acknowledged in a settlement that she violated various administrative rules for behavior that ended less than one year prior to the August 31, 2019 closing date. Regarding the major discipline in question, the Final Notice of Disciplinary Action (FNDA) states the sustained charges were based on the following:

Between May 22, 2018 and October 19, 2018, PST Trejo sent Sergeant M. approximately 370 text messages. Contained with the text messages: (1) PST Trejo expresses a desire to “fuck (Sergeant M.) up and trash his car” and to seek “justice;” (2) PST mentions that she is having trouble communicating with Sergeant M. regarding issues of work because of the animosity between her and Sergeant M; (3) PST Trejo threatens to expose Sergeant M.’s extramarital affair to his wife; and PST Trejo refers to Officer V. as a “bitch.”

Further, Trejo does not deny these allegations. To the contrary, instead of appealing this disciplinary action, she settled the matter. The fact that the suspension was only six days does not suggest that her actions were not significant as she agreed to accept major discipline. *See N.J.A.C. 4A:2-2.2(a)3*. Therefore, based on her lack of appeal, the Commission found that Trejo admitted to such behavior. Further, such behavior is clearly adverse to being a Police Officer as Police Officers must follow superiors’ orders and maintain good working relationships with other Police Officers as well as other municipal employees and the general public. Therefore, the record indicated that Trejo lacked the high standards, including good judgment and character, to be a Police Officer. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Additionally, as indicated in the prior decision, major discipline, particularly for behavior that was in close proximity to the August 31, 2019 closing date, in and of itself, is grounds for removal from an eligible list. *See In the Matter of Lisa Brown* (CSC, decided October 4, 2017); *In the Matter of Paul Kleinschmidt* (CSC, decided October 3, 2018). Also, as indicated in the prior decision,

while Trejo claimed that the settlement precluded the appointing authority from presenting her major discipline as a basis to remove her name from the subject list, based on the high standards for a Police Officer, it would not be in the public's best interest to have prior discipline automatically removed from consideration when evaluating one's candidacy for a position as a Police Officer. Moreover, Trejo's additional continuous employment discipline between 2012 to 2018 as a PST for the appointing authority only provided more evidence that her employment history was adverse to being a Police Officer. Further, as previously stated, despite her claims that these disciplines were unwarranted, she had the opportunity to challenge those disciplines at those times and she cannot relitigate those issues now. Therefore, contrary to Trejo's statement that the Commission "rubber stamped" the appointing authority's removal on the pretextual premise, the record showed that the appointing authority had sufficient grounds to find that her employment history was adverse to being a Police Officer under *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*.

Concerning Trejo's claim that the Commission made clear material error by not addressing her "disparate treatment" claim, Trejo presents that she certified in her initial appeal, "based on my information and belief, other candidates for employment to the police officer position have had similar and/or more serious disciplinary and/or criminal violation, and were hired by the Department." However, the Commission did not address her statement as she did not present one scintilla of evidence to support her "belief" as she did not present any individuals, documents, or other evidence to support her claim. Trejo argues that she did not provide the alleged "favored" appointees with her initial appeal because the appointing authority already has this information and it did not want to provide the it an advantage prior to a hearing is unpersuasive as the Commission does not have the alleged unfavorable backgrounds of the alleged favored appointees. It is also noted that Trejo, for the first time on reconsideration, is making her "disparate treatment" claim based on her membership in a protected class, a Hispanic female. Trejo has offered no explanation as to why she did not indicate in the initial appeal that her alleged "disparate treatment" was based on her being a Hispanic female.¹ Regardless, even if she had, mere allegations, without more, is insufficient for the Commission to find that a hearing is warranted as to find otherwise would render *N.J.A.C. 4A:2-1.1(d)* virtually useless. In other words, the Commission did not address her statement that she was treated unfavorably as compared to others in the initial decision because her statement was without sufficient merit to warrant a discussion in a written opinion.

Moreover, although Trejo does not provide the names of the alleged favored appointees and any supporting evidence to demonstrate that these appointees had adverse backgrounds, for the first time on reconsideration, she specifies the adverse backgrounds that she alleges that these "favored" appointees possess. However, even

¹ In her request, Trejo also highlights that under the Act, employees are to be protected from political coercion, but she does not make any argument that she was subjected to political coercion.

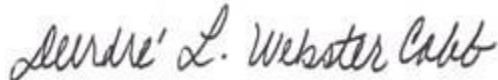
if, hypothetically, it is true that the appointing authority appointed eligibles with backgrounds that were more adverse than her, this does not indicate that Trejo had a background that was suitable to be a Police Officer. At most, a hearing could only discover that there were appointees who also had adverse backgrounds that should not have been appointed. It is also possible that the appointing authority appointed individuals who had greater criminal or disciplinary history than Trejo, but found that sufficient time, the specific nature of the offenses or other factors did not render those individuals currently unsuitable to be Police Officers. Regardless, the recency and specific nature of the communications with a Police Sergeant that she acknowledged based on her settlement rendered her unsuitable to be a Police Officer for the reasons stated above. Further, Trejo has not presented any allegation or evidence that any appointee engaged in specific conduct that was directly adverse to maintaining good working relationships within the Police Department as her conduct was. Therefore, the Commission did not commit clear material error when it decided this matter on the written record as there were no material and controlling dispute of facts regarding her lack of suitability to be a Police Officer and there is nothing in the record to suggest that she was a similarly situated candidate who was treated differently based on her membership in a protected class or otherwise treated unfairly.

ORDER

Therefore, it is ordered that this request 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 MAY, 2022



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