



appellant contends that the then business administrator was unprofessional in imposing a 20-working day suspension on him after first offering a minor disciplinary action during the disciplinary hearing. In this regard, the appellant asserts that he was offered a minor disciplinary action but that after consulting with his attorney, the business administrator “pulled the offer off the table” and instead changed the proposed discipline to a 20-day suspension. The appellant maintains that he told the then business administrator that he was going to appeal the discipline. In response, he claims that the business administrator then maintained that the appellant would have to serve the suspension immediately after the hearing. The appellant adds that the business administrator was terminated from his position due to alleged unethical practices. Additionally, the appellant provides details of the incident that lead to his 20-day suspension and argues that his actions were justified and that this incident should not be used to substantiate his removal from the subject eligible list. Further, the appellant argues that other officers have been promoted after being arrested and facing possible indictable crimes. In this regard, he provides two newspaper articles about the same officer receiving a promotion to Police Lieutenant in 2016 after receiving an eight-day suspension and having to pay restitution for using an undercover police vehicle for personal reasons during work hours.

In response, the appointing authority, represented by Robert J. Merryman, Esq., reiterates the appellant’s arrest history and provides copies of the information it provided when the certification was being disposed. Additionally, it argues that since the appellant was terminated effective April 7, 2022, his present appeal is moot as he is no longer employed as a Police Officer, he is not eligible for promotion to the rank of Sergeant.<sup>2</sup>

In reply, the appellant argues that he filed for a disability pension on June 30, 2021, with an effective retirement date of July 1, 2021.<sup>3</sup> He contends that his appeal is not moot because had he been promoted he would be entitled to a higher retirement benefit since both ordinary disability pension and accidental disability pension are based on a percentage of last salary.

## 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 of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. Additionally, *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

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<sup>2</sup> The Commission notes that because the termination date was effective after the February 28, 2022 disposition date of the subject certification, the present matter is not moot and arguments in this regard will not be addressed further in this decision.

<sup>3</sup> Public records indicate that the appellant’s request for an accidental disability retirement was denied at the July 21, 2021 Police and Firemen’s Retirement System of New Jersey meeting. Thereafter, the appellant appealed this denial and he was granted a hearing which is currently pending at OAL.

decision to remove his or her name from an eligible list was in error. Further, *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 appointment.

Initially, the Commission notes that the fact the appellant has veteran status does not preclude him from being removed from an eligible list pursuant to *N.J.A.C.* 4A:4-4.7(a)1, and/or *N.J.A.C.* 4A:4-6.1(a)7. See *In the Matter of Julian J. Maruri* (CSC, decided April 20, 2011) (No basis to restore appellant's name to eligible list just because he is a veteran when it was determined a sufficient basis existed to remove his name due to an adverse employment history).

In the instant matter, the appellant's name was removed from the subject eligible list based on his employment record. Specifically, the appointing authority provided that the appellant's disciplinary history included a 20-day suspension in 2020, a four-day suspension in 2018, written reprimands in 2013 and 2020, an oral reprimand, and a performance notice. On appeal the appellant argues that the actions of the then business administrator were unprofessional in the manner in which the 20-day suspension was imposed. The appellant also argues the facts of his suspension, which is currently pending a hearing at the OAL. However, since the appellant's appeal of this 20-working day suspension is pending at OAL, the Commission will not determine the appropriateness of the 20-working day suspension in this appeal. However, it is clear that the 20-working day suspension is part of the appellant's prior employment record and was appropriately considered by the appointing authority in its removal of the appellant's name from the eligible list. However, it is noted that should the appellant be successful in his appeal of the 20-working day suspension, he would have sufficient grounds to request reconsideration of this decision from the Commission.

Further, the Commission finds that the appellant's employment history which includes a recent major disciplinary action and several minor disciplinary actions clearly relates adversely to the title sought. The Commission notes that the position of 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). Moreover, while the appellant argues that others with major disciplinary actions have received promotions, the one example he provides involves an officer with only an eight-day suspension with restitution for using a police vehicle for personal reasons, and a one-day suspension in 2003. The promotion in question occurred in 2016 and for a different title than the title sought by the appellant. The disciplinary histories for the appellant and the other officer he identified are clearly

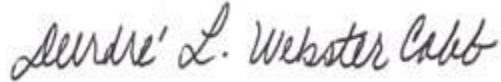
distinguishable as the other officer had a less severe major disciplinary suspension for a less egregious action, and less minor discipline actions filed against him. Accordingly, based on the foregoing, the Commission finds that the appellant's employment history constitutes sufficient cause to remove his name from the eligible list for Police Sergeant (PM0852V), Perth Amboy.

**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 15<sup>TH</sup> DAY OF JUNE 2022



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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Stephen Hedberg  
Arthur J. Murray, Esq.  
Robert J. Merryman, Esq.  
Helmin J. Caba  
Agency Services  
Records Unit