In the Matter of Eric DeBoskey, Police Officer (Special Re-employment), Ewing Township
CSC Docket No. 2013-935
(Civil Service Commission, decided February 12, 2014)

Eric DeBoskey, represented by David D. Gies, Esq., appeals the removal of his name from the special reemployment list for Police Officer, Ewing Township, on the basis of an unsatisfactory employment history.

By way of background, the appellant was suspended for 180 days effective April 1, 2010 on charges of failure to abide by departmental rules, possession of a prescription drug without a prescription, and failure to report a violation of the law. Specifically, the appointing authority asserted that the appellant possessed a prescription legend drug in violation of *N.J.S.A.* 2C:35-10.5 and that he failed to report that another Police Officer was distributing a prescription legend drug. In lieu of removal, the appellant was suspended for 180 days and he was advised that his return to employment was conditioned upon satisfactory completion of a treatment plan for his dependency to pain killers and submitting to fitness for duty evaluations. While he was suspended, on June 29, 2010, the appellant was notified that for reasons of economy and efficiency, he would be laid off effective August 17, 2010.[1] Thereafter, the Division of Classification and Personnel Management (CPM) advised the appellant that there were no lateral or demotional rights that he could be afforded and his name was placed on the special reemployment list for Police Officer.

By memorandum dated September 15, 2010, Robert A. Coulton, Chief of Police, advised the appellant that as a result of his pending layoff, the terms and conditions that the appellant had agreed to complete prior to his reinstatement are amended. Specifically, the appellant was advised that the remainder of his suspension (from September 17, 2010 to September 27, 2010) was waived, that the appellant must satisfy any treatment conditions prescribed by his physician, and that, prior to returning to work, he must be evaluated by his personal physician and Township physician for a determination of fitness for duty, that he must be undergo an evaluation of fitness for duty by the Township psychologist, that he must complete any requirements set forth by these medical providers, and that, during the first six months after returning to duty, submit to a random drug test. The appellant and Coulton signed this document on September 20, 2010 and the appellant's layoff was recorded effective September 17, 2010. Approximately one year later, on September 2, 2011, the appellant applied for and was approved for placement on the Statewide Eligible List or "Rice Bill" list. As part of the application for placement on the Rice Bill list, the appointing authority certifies that the applicant meets the requirements listed in *N.J.S.A.* 40A:14-180 *et seq.*

[1] According to County and Municipal Personnel System (CAMPS) records, the employees impacted by this reduction in force were laid off effective September 17, 2010.

Placement on the Rice Bill list requires, in pertinent part, that the appointing authority certify that the applicant was a law enforcement officer who was serving in good standing, but, for reasons of economy and efficiency, was laid off.

Subsequently, the appellant's name was certified from the special reemployment list. In disposing of the February 2, 2012 certification, the appointing authority requested the removal of the appellant's name, contending that the appellant had an unsatisfactory employment record. It also requested that his name be removed from the Rice Bill list. In support of its request, the appointing authority stated that the appellant was suspended for 180 days, that he failed to comply with his agreed upon drug treatment program, and that he did not obtain approval from a psychologist regarding his fitness for duty. The appointing authority also indicated that the appellant was evaluated by its psychologist, Dr. Daniel Shievella, one month into his suspension, on April 22, 2010, and admitted that he discontinued his medical therapy and ceased going to counseling for drug rehabilitation. Dr. Shievella concluded that the appellant was vulnerable for a relapse in returning to Percocet abuse. Therefore, the appointing authority contended that the appellant's unsatisfactory employment record, his failure to comply with a drug treatment plan, and failure to obtain approval regarding his fitness for duty warranted his removal from the list. The appellant appealed the matter of the removal of his name to the Division of Classification and Personnel Management (CPM) which referred the matter to the Civil Service Commission (Commission) for direct review.

On appeal, the appellant states that he was prescribed Percocet for a bad back and then became addicted to the drug. In March 2010, before his suspension, the appellant presents that he admitted his addiction and checked into a detoxification inpatient program. Then, he was discharged from the hospital, admitted to a residential facility for monitoring, and returned home on March 28, 2010. On March 30, 2010, he agreed to a 180 day suspension in lieu of termination. During suspension, the appellant maintains that he followed and successfully completed an outpatient treatment plan on July 1, 2010. Additionally, the appellant asserts that he tested negatively three times for drugs, the last time being August 27, 2010. Further, the appellant argues that the appointing authority has not proved his psychological unfitness as there was nothing in the report that indicated that the psychologist concluded that the appellant was unfit for duty. In this regard, he notes that his interview with the appointing authority's psychologist's occurred only one month after he voluntarily sought impatient treatment. Moreover, the appellant presents that he truthfully admitted to the psychologist that he stopped taking Naltrexone because he did not experience a craving for Percocet. The appellant also argues that even though the appointing authority's psychologist concluded that he was prone to relapses, he was found to be in the normal range for emotional behavior in the objective tests that the psychologist performed.

Additionally, between April 1, 2010 and August 27, 2010, the appellant states that all of the drug tests he submitted came back negative, which provides further evidence that he did not need to be weaned from Percocet with Naltrexone. Regardless, the appellant underscores that the appointing authority agreed to waive the remainder of his suspension, which evidences compliance with his conditions for continued employment, and the status of his separation was in good standing. Thus, he contends that the appointing authority's argument that he is unfit for duty is without merit. The appellant also claims that there is no evidence that he used Percocet while on duty and a third party complaint that the appointing authority received accusing him of selling drugs was dropped as "a fishing expedition." Therefore, the appellant argues that there is not any evidence that he is psychologically unfit to perform his duties and that the appointing authority has not demonstrated that he failed to comply with his drug treatment plans or any other matter from the disciplinary order outlining his condition for employment. Accordingly, the appellant asserts that he should not be removed from either list.

Although provided the opportunity, the appointing authority did not provide additional arguments or information for the Commission to review.

CONCLUSION

N.J.A.C. 4A:8-2.3(c)3 provides, in pertinent part, that removal of names from a special reemployment list may be made in accordance with applicable rules. *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows for the removal of 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. Further, *N.J.A.C.* 4A:4-4.7(a)11 allows the removal of an eligible's name from an eligible list for other valid reasons.

N.J.S.A. 40A:14-180, Appointment of certain county, municipal, sheriff's law enforcement officers, as amended effective on March 1, 2011, provides that:

> a. The provisions of any other law to the contrary notwithstanding, the appointing authority of a county or municipality which, pursuant to *N.J.S.A.* 40A:14-106, in the case of a county, or *N.J.S.A.* 40A:14-118, in the case of a municipality, has established and maintains a police force or the sheriff of any county may appoint as a member or officer of the county or municipal police department or as a member or officer of the county sheriff's office any person who:

(1) was serving as a law enforcement officer in good standing in any State, county or municipal law enforcement department or agency, or county sheriff's office; and

(2) satisfactorily completed a working test period in a State law enforcement title or in a law enforcement title in a county or municipality which has adopted Title 11A, Civil Service, of the New Jersey Statutes or satisfactorily completed a comparable, documented probationary period in a law enforcement title in a county or municipality which has not adopted Title 11A, Civil Service; and

(3) was, for reasons of economy, terminated as a law enforcement officer within 60 months prior to the appointment.

Initially, with regard to his argument that the appointing authority has not met its burden of proof in determining that he is unfit for duty, the appellant's arguments are misplaced. In this case, the appointing authority requested the removal of his name from the special reemployment list based on his adverse employment history, *not* on his failure of a fitness for duty examination.

In the instant matter, the appointing authority has presented a valid basis to substantiate its request to remove the appellant's name from the special reemployment list. Specifically, the appellant was suspended for 180 days on charges of failure to abide by departmental rules, possession of a prescription drug without a prescription, and failure to report a violation of the law. This alone is sufficient evidence of the appellant's unsatisfactory employment record and good cause to remove the appellant from the special reemployment list. *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). The Commission notes that Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J* 567 (1990). Therefore, the appellant's 180 day suspension just prior to his layoff warrants his removal from the special reemployment list.

Although the appellant's disciplinary history alone warrants his removal from the special reemployment list, the Commission notes that in lieu of termination, the appellant agreed to comply with a number of conditions before the appointing authority would permit him to return to active duty. While the agreement between the appellant and the appointing authority was not presented to the Commission for acknowledgement, it is clear that he agreed to be evaluated

by his personal physician for a determination of fitness for duty, as well as being evaluated and approved by the appointing authority's physician and psychologist for a determination of his fitness for duty. The appellant has not provided any evidence in the course of this appeal that he has complied with these terms. Additionally, the evidence in the record indicates that the appellant's physicians recommended that the appellant take Naltrexone daily for nine months. However, the appellant has admitted that he unilaterally made the decision to stop taking Naltrexone before completing the prescribed nine months regimen because he claims he no longer experienced a craving for Percocet. The appellant's decision to not comply with the terms of his suspension not only put his own well-being seriously at risk, but also could subject his coworkers and the community at-large to unwarranted and unjustified dangers. It also provides evidence of his unsuitability as a Police Officer because he has failed to provide evidence of his compliance with the terms of the agreement to which he was a party. Therefore, this provides additional support to remove the appellant's name from the subject list.

In reference to the appointing authority's request to remove the appellant from the Rice Bill list, although the Commission is the custodian of the Rice Bill list, it is not empowered by law or rule to remove the names of eligibles based on an unsatisfactory employment record. While the appellant's placement on the Rice Bill list was apparently certified by the appointing authority based on the conditions of his separation, *i.e.*, his layoff, *not* removal as a Police Officer, the fact that he separated from employment in good standing does not obviate the fact that he had an adverse prior employment record warranting the removal of his name from the special reemployment list. Thus, while his placement on the Rice Bill list was appropriate, it does not provide evidence that the appellant did not have an adverse employment history. However, the Commission notes that use of the Rice Bill list by other appointing authorities is discretionary and the appellant's placement on the list does not mandate his appointment to a law enforcement position.

Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the special reemployment list.

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.