



STATE OF NEW JERSEY

In the Matter of Anthony Caramiello,
Police Sergeant (PM4553C),
Gloucester Township

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

CSC Docket Nos. 2024-2544

List Removal Appeal

ISSUED: September 4, 2024 (SLK)

Anthony Caramiello, represented by Jacqueline M. Vigilante, Esq., appeals the decision to remove his name from the Police Sergeant (PM4553C), Gloucester Township eligible list on the basis of an unsatisfactory employment record.

The appellant took the promotional examination for Police Sergeant (PM4553C), Gloucester Township, which had an October 21, 2021, closing date, achieved a passing score, and was ranked on the subsequent eligible list. On the seventh certification from the subject eligible list, his name was certified on April 30, 2024, (PL240737) and the appellant, a veteran, was the first ranked candidate. Two other names were also certified and the second and third ranked candidates on the subject certification were non-veterans. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory employment report. Specifically, the appellant received counseling for violating the ethical use of technology policy by engaging in an argument with a citizen on Facebook on August 28, 2019; counseling for not wearing personnel protection equipment in violation of a special order and COVID-19 crisis procedures regarding a differential treatment and demeanor allegation during a motor vehicle stop on June 23, 2020; an official reprimand and training for violating the use of force policy concerning breaking a window during a vehicle stop where the appellant failed to use de-escalation techniques on December 12, 2020; a written reprimand for violating rules and regulations for refusal to obey a proper order from a supervisor where the appellant was given a direct order to check the welfare of an incoherent male following his

assignment at the watch desk which the appellant failed to follow on January 26, 2021; a written reprimand for violating rules and regulations for failure to conduct a proper, thorough and complete investigation by failing to investigate a complaint of simple assault on March 23, 2021; a written reprimand for violating the watch desk officer policy by failing to check voice mail which contained a report of a missing juvenile on March 23, 2021; a four-day suspension for harassment in the workplace where during a conversation at the end of a shift, the appellant called another officer a “faggot” on March 8, 2022; an official reprimand and training for failure to intervene while an officer engaged in an argument with a citizen during a motor vehicle crash on June 21, 2023; and use of force training and virtual training for de-escalation regarding an excessive force allegation at a Target store where the appellant used a leg sweep to take a subject down to the ground during a shoplifting investigation on October 25, 2023. Thereafter, an eighth certification (PL240819) was issued, and the first ranked eligible, a non-veteran, was appointed on June 1, 2024. The PM4553C eligible list expires on October 19, 2025.

On appeal, the appellant presents that he was the first positioned eligible on the subject certification, he has veterans preference, and the second and third positioned candidates on the subject certification were not veterans. Therefore, the appellant argues that under *N.J.A.C. 4A:5-2.2(c)*, his appointment was mandatory. He notes that his name had been on the subject eligible list since October 2022; however, his name was only removed from the list when he was the first positioned eligible on the subject certification. The appellant emphasizes that his name was not removed for one of the specific enumerated reasons under *N.J.A.C. 4A:4-4.7*, and instead, it was removed for an adverse employment history under *N.J.A.C. 4A:4-6.1(a)7*. He states that the appointing authority alleges that he has a substantial disciplinary history based on nine sustained disciplines including two this year. However, the appellant highlights that he does not have any major disciplines. Instead, his employment history contains one 2022 minor discipline and other reprimands, counseling, or retraining. He presents that under the State Attorney General Internal Affairs Model Police and Procedures 2.2.6, discipline consists of oral and written reprimands or performance notice, fines, suspensions without pay, loss of a promotional opportunity, demotion, and discharge from employment. Further, the appellant indicates that *N.J.A.C. 4:2-3.1* provides that minor discipline is a formal written reprimand or a suspension or fine of five working days or less. Therefore, he asserts that the first two incidents cited by the appointing authority, which only resulted in counseling, and the ninth incident, which only resulted in training, are not considered part of his disciplinary record. The appellant emphasizes that other than one incident, he never received anything more than a written reprimand which he contends undermines the appointing authority’s position that his employment record is adverse to being a Police Sergeant. Further, he asserts that since the appointing authority did not use any progressive discipline, it does not believe that his background demonstrates a pattern of misconduct, poor judgment or a lack of self-control and it should not be permitted to argue otherwise on appeal. He reiterates

that his background consists of just five reprimands and one minor discipline over a six-year career, which is not disqualifying for a position in the subject title, and this discipline is significantly less than which the appointing authority allegedly falsely represented to this agency when it requested to remove the appellant's name from the subject eligible list. Additionally, the appellant submits two official commendation distinguished unit citations from May 22, 2022, and June 28, 2022, a commendation letter to the Chief from a Sergeant on June 3, 2022, and a letter from the same Sergeant, who is now retired, in support of his appeal.

In response, the appointing authority, represented by David. A. Rapuano, Esq., acknowledges that under *N.J.A.C.* 4A:5-2.2(c), the appellant, who is the highest ranked eligible and the only veteran on the subject certification, is mandated to be appointed unless there is cause to remove him under *N.J.A.C.* 4A:4-4.7. It asserts that contrary to the appellant's statement, the removal for an adverse employment history under *N.J.A.C.* 4A:4-6.1(a)7 is not an undifferentiated "catch all" provision, but a specifically enumerated reason why an eligible may be removed from a list. The appointing authority highlights that during his relatively short service as a Police Officers, six years, he has amassed a substantial disciplinary history that contains nine sustained charges including two in this past year and it submits his disciplinary record as stated above. It argues that this disciplinary history, including its recency, makes the appellant presently unpromotable to the supervisory position of Sergeant as Sergeants are responsible for the direct supervision of patrol officers and are expected to model appropriate behavior and adherence to appropriate standards. The appointing authority notes that it is well settled that law enforcement officers are held to a higher standard. It contends that the nature of the nine separate incidents in a relatively short time demonstrates the appellant's lack of self-control, disrespect for authority, failure to follow proper procedures, and an uneven temperament when dealing with civilians and fellow officers. The appointing authority presents that the appellant's most serious disciplinary penalty, a four-day suspension in April 2022 where he called a fellow Police Officer a "faggot" in front of numerous witnesses. Additionally, it reiterates that the appellant has received multiple disciplines related to use of force, failing to properly de-escalate confrontations, and improper demeanor towards civilians, including incidents in October 2023, December 2020, June 2020, and August 2019. Further, the appellant has also received disciplines concerning his failure to follow proper procedures and/orders including incidents in June 2023, March 2021, and January 2021.

The appointing authority states that contrary to the entire thrust of the appellant's legally unsupported argument on appeal, there is no basis for the assertion that adverse employment history may only be the basis for removal when there is major discipline and documented written reprimands must, or should even be, ignored. It contends that various Civil Service Commission (Commission) decisions over the years have upheld list removals based solely on prior work history that involved no major discipline and in which written reprimands played a

significant part. It presents *In the Matter of William Brophy* (MSB, decided February 1, 2000) where Camden County asserted that a disabled veteran should not be appointed as an Investigator Sergeant, Penal Institution due to his prior disciplinary history as a Stock Handler with Camden County. The then Merit Systems Board upheld the removal based on several minor disciplinary actions from 1993 to 1995, including two written reprimands and fine of one and one-half day's pay for conduct unbecoming a public employee (fraternization) and written reprimands for failing to report a lost identification card and for making an error regarding the issuance of a check to an inmate. Additionally, the appellant was counseled for leaving money out of a safe, for insubordination in not following the proper chain of command with regard to written communications and for failing to follow procedures with regard to the handling of releases near the end of his shift. The appointing authority also emphasizes that the appellant has the burden of proof that his removal was unsupported.

CONCLUSION

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include suspension or fine for more than five working days at any one time.

N.J.A.C. 4A:2-3.1(a) provides that minor discipline is a formal written reprimand or suspension or fine of five working days or less.

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 eligible's name from an eligible list for having a prior employment history which relates adversely to the title.

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 for other sufficient reasons.

N.J.A.C. 4A:4-4.8(a)3ii provides that upon receipt of a certification, and appointing authority shall appoint one of the top three (rule of three) from an open competitive or promotional list, provided that if the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed.

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." See *N.J.S.A.* 11A:4-8. A nonveteran shall not be appointed unless the appointing authority shows cause why the veterans should be removed from the promotional list. See *N.J.A.C.* 4A:4-4.7 for removal procedures.

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 appointing authority sought the removal of the appellant's name from the subject eligible list for an unsatisfactory employment record. It relied on the appellant's employment record as described above, which includes two counseling incidents (August 28, 2019 and June 23, 2020), five written reprimands (December 12, 2020, January 26, 2021, two from March 23, 2021, and June 21, 2023), a four-day suspension (March 8, 2022), and one training only (October 25, 2023). It is noted that the three incidents which resulted in the appellant only receiving counseling or training are not considered discipline. Further, the five written reprimands and the four-day suspension are considered minor discipline. *See N.J.A.C. 4A:2-3.1(a)*. It is noted that generally, the Commission has determined that minor disciplinary actions do not constitute a sufficiently adverse employment record to justify the removal of an eligible's name from a list. *See In the Matter of Laura Verdi* (CSC, decided July 30, 2008) and *In the Matter of Walter Langdon* (MSB, decided October 14, 1998).

In reviewing this matter, the Commission recognizes the high standard for a Police Sergeant. *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). In that regard, while considered minor discipline, the March 8, 2022, and June 21, 2023, incidents are most concerning as they occurred **after** the appellant's name appeared on the eligible list. Also, the incident described in the four-day suspension is especially alarming, and demonstrates, at the very least, the appellant's poor judgment. Moreover, his history of prior minor discipline demonstrates that the appellant has had consistent performance issues during his six years of employment. Such a background is clearly non-conducive for a current candidate for a supervisory law enforcement position. Accordingly, the appointing authority has presented a sufficient basis to remove the appellant's name from the current list for Police Sergeant (PM4553C), Gloucester Township.

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 SEPTEMBER, 2024

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