

B-7



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Janie Reid, Police
Lieutenant (PM1458R), East Orange

CSC Docket No. 2016-578

List Removal Appeal

ISSUED: **DEC 17 2015** (CSM)

Janie Reid appeals the removal of her name from the eligible list for Police Lieutenant (PM1458R), East Orange, on the basis of an unsatisfactory employment record.

The appellant's name appeared as the 4th ranked eligible on the subject list that expires on February 5, 2017. On February 19, 2015, the appellant's name was certified (PL150164) in the 1st rank. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that she had an unsatisfactory employment record. In support of its request, the appointing authority indicated that the appellant received training in lieu of discipline on four occasions between February 2003 and July 2013, received written reprimands in February 2002, April 2007, and April 2011 for insubordination, conduct toward superior and subordinate officers, and a demeanor violation, was suspended for five days in April 2011 on charges of conduct toward a subordinate officer, and a 120 day suspension in July 2013 for other sufficient cause. The Division of Agency Services (Agency Services) determined that the appointing authority sufficiently documented its request to remove the appellant's name from the subject list.

On appeal, the appellant states that she has been bypassed on two previous certifications for Police Lieutenant due to ongoing harassment by the Chief of Police, William Robinson. The appellant provides copies of letters she submitted to the appointing authority's Human Resource Services Department alleging harassment and a hostile work environment dating back to March 2002. In these documents, the appellant claims that she was suspended and ordered to relinquish her service revolver on September 11, 2012 due to an active domestic violence

restraining order and was served with a notice that she was being indefinitely suspended on November 20, 2012, five days after the final restraining order was vacated on November 15, 2012. The appellant states that she had appealed her previous bypass and the request to remove her name from the subject list is another form of harassment and is punitive and retaliatory in nature as it penalizes her for previous action for which discipline has already been meted out. Additionally, the appellant notes that another eligible on the list was promoted to Police Lieutenant even though she also has a lengthy disciplinary record and poor attendance. Thus, the appellant maintains that all of those who have been promoted should have their personnel files scrutinized for any unsatisfactory employment information. Further, the appellant claims that the removal of her name from the subject list is a means to promote several individuals favored by the Chief of Police even though at least one appointee lacks field supervisory experience.

In response, the appointing authority, represented by Marlin G. Townes, III, Esq., Assistant Corporation Counsel, states that the Civil Service Commission has removed a candidate's name from an eligible list on the basis of one major disciplinary action alone and that it is permissible for an appointing authority to consider an eligible's disciplinary history as a basis for bypassing him or her on a certification. Further, the appellant has not provided any proof that the complaints she submitted to its Human Resource Services Department were the motivation behind the decision to bypass and remove her name from the list. In this case, the appointing authority states that the appellant was invited to interview for the subject position but chose not to participate in the interview process. Therefore, it relied on the performance history, supervisory skills, and the disciplinary history of the candidates who participated in the process when making appointment decisions. Moreover, the appellant's bypass on a previous list for Police Lieutenant and her disciplinary history demonstrates that she is not well suited to display the required sound decision making and greater responsibility required by a higher title. In this regard, while the appellant claims that some of the appointees have disciplinary histories, they are not of the same character and frequency of the appellant. Additionally, by letter dated July 18, 2015, the appellant was directed to submit to a fitness for duty evaluation.

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.

In disposing the certifications, the appointing authority attached the appellant's complete major and minor disciplinary history dating back to February 2002. The appellant's disciplinary record also evidences an official written reprimand (OWR) in February 2002 for insubordination, a two-day suspension in

April 2002 for neglect of duty, an OWR in April 2007 for conduct toward superior and subordinate officers, an OWR in February 2011 for a demeanor violation, a five day suspension in April 2011 for conduct toward superior and subordinate officers, and a 120 day suspension in July 2013 for other sufficient cause as a result of a violation of the Attorney General Guidelines regarding Law Enforcement Officers involved in Domestic Violence Actions.

In the instant matter, the position sought, Police Lieutenant, is a high-level law enforcement title that is reserved for employees who exhibit leadership skills, a positive work ethic, and respect for the rules and policies of the appointing authority. Further, the Commission has previously removed eligibles from promotional lists where their employment history revealed extensive minor discipline or as little as one major discipline. *See In the Matter of Louis Bernstein, Correction Lieutenant (PS6320I), Department of Corrections* (MSB, decided July 17, 2002) (Removal upheld from a Correction Lieutenant eligible list for 20 minor disciplinary infractions in a 10-year period.); *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); and *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).

The Commission has serious concerns with the appellant's disciplinary history that she accumulated, particularly given that the nature of the infractions evidence her inclination for bad judgment and lack of discipline. Such qualities are unacceptable for individuals applying for the position of Police Lieutenant. Indeed, the public interest would not be served by rewarding such conduct by considering the appellant for a high ranking law enforcement position. Clearly, an extensive minor disciplinary history of a supervisory law enforcement officer cannot be casually regarded by the Commission. In this regard, the Commission notes that a law enforcement officer is held to a higher standard than a civilian public employee. *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, it was appropriate for the appointing authority to remove the appellant's name from the eligible list.

Although the appellant also asserts that several individuals with disciplinary records were appointed, she has not provided any specific evidence or information regarding the adverse employment histories of these individuals. Regardless, the appellant has not rebutted the appointing authority's argument that the

disciplinary records of these individuals were not of the same character and frequency as that of the appellant's. Additionally, in *In the Matter of Janie Reid* (CSC, decided April 1, 2015), the Commission determined that the appellant had not established that her bypass on the Police Lieutenant (PM5014M), East Orange eligible list was the result of her filing a complaint concerning workplace harassment.

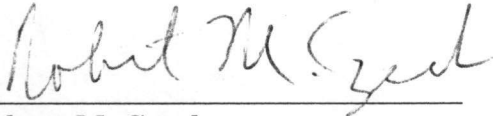
Accordingly, the appointing authority has presented sufficient cause to remove the appellant's name from the Police Lieutenant (PM1458R) eligible list.

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.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF DECEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Janie Reid.
Marlin G. Townes, III, Esq.
Joe Hill
Joseph Gambino