



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Robert Cottrell,
Police Officer (S9999R), Andover

CSC Docket No. 2016-2509

List Removal Appeal

ISSUED: **NOV 30 2016** (CSM)

Robert Cottrell, represented by Michael Prigoff, Esq., appeals the removal of his name from the eligible list for Police Officer (S9999R), Andover, on the basis of an employment history which relates adversely to the title.

The appellant's name appeared as the first ranked, non-veteran eligible on the certification (OL140622) that was issued to the appointing authority on May 16, 2014. In disposing of the certification, the appointing authority removed the eligible in the 2nd position and appointed the eligible in the 3rd (Michael Haggerty) and 4th (Matthew Puccio) positions. The appointing authority requested the removal of the appellant's name, contending that he had an employment history which relates adversely to the title. Specifically, the appointing authority indicated that the appellant received a 50 working day suspension beginning July 14, 2011 during his employment with Sussex County as a County Correction Officer based on sustained charges of incompetency, inefficiency, and failure to perform duties, conduct unbecoming a public employee, and other sufficient cause. The appellant appealed the matter of the removal of his name to the Division of Agency Services, which found that the appointing authority sustained its request (copy attached).

In his appeal postmarked January 19, 2016 of Agency Services' May 14, 2015 decision, the appellant initially requests that the time requirements for appealing the prior decision be relaxed because his attorney was diagnosed with a serious medical condition that impacted his ability to handle matters entrusted to him in a timely manner. Therefore, the appellant requests that his attorney's medical issues not detract from his right to have his matter fairly determined.

With respect to the merits of his appeal, the appellant asserts that he was removed from the list based upon impermissible political reasons and nepotism and that his 2011 disciplinary matter was a pretext. In this regard, he contends that the real reason his name was removed was because the Chief of Police and a Police Lieutenant, the two highest ranking members in the Police Department, wanted to appoint Haggerty and Puccio. Specifically, he asserts that the Chief of Police is close personnel friends with Haggerty and that the Police Lieutenant is close personal friends with Puccio. The appellant summarizes the events that led to his 50 working day suspension as a County Correction Officer with Sussex County and states that the circumstances about that matter cannot be construed as evidence that he lacks good character warranting the removal of his name from the list. He claims that Haggerty's father is a close friend of the Chief of Police and that Puccio worked as a dispatcher for the Police Department and is friends with the Police Lieutenant. In addition, he claims that the deceased father of Puccio's fiancée was a former Andover Police Officer who was a close friend of the Police Chief. Moreover, the appellant contends that Puccio should never have been eligible for appointment, since he is not a resident and Andover residents are given preference for initial appointments to the Police Department. In support of this assertion, the appellant provides a copy of a computer screen shot from the Andover Police Department web-site indicating that preference is given to residents for new officers and copies of property tax records.

In response, the appointing authority, represented by Adam S. Abramson-Schneider, Esq., presents that there is no basis for the Civil Service Commission (Commission) to relax the time requirements and accept the appellant's late appeal because it is nine months overdue. In this regard, the appointing authority emphasizes that the attorney *Rules of Professional Conduct* require appellant's counsel to keep him informed and to decline or terminate representation if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client. *See R.P.C. 1.16(a)2*. Further, given that there is no evidence that the appellant himself sought to resolve the matter by contacting the Commission during this nine-month period, granting the request to accept the late appeal would be excessive and prejudicial. Thus, the appointing authority maintains that the appeal should be dismissed as untimely.

With respect to the merits of its request to remove his name from the list, the appointing authority emphasizes that the appellant's employment history contains a major discipline in which he served a 50 working day suspension for his egregious conduct. Although the appellant now attempts to downplay his involvement in the incident that led to his discipline because he received the most lenient of penalties, the appointing authority notes that Sussex County initially sought to terminate him but settled to a 50 working day suspension and a last chance agreement. More germane in this matter, the basis for the appellant's discipline was failure to follow the rules and regulations of the Sussex County Correctional Facility and logging

false information into a Correction Facility log book. Given that falsification requires intent to mislead or omit a material fact, the appointing authority maintains that his major discipline as a County Correction Officer provides a basis to remove his name from the eligible list. Additionally, the appointing authority states that the appellant cannot now attempt to re-litigate the charges or affect the conclusion reached in that disciplinary action in this case, particularly since he could have appealed his disciplinary sanction but failed to do so. Regarding his assertion that his removal was based on impermissible political reasons and nepotism, the appointing authority provides a certification from Chief of Police Eric Danielson (who was a Lieutenant at the time of the certification) stating that the questions asked during the appellant's interview were the same for all individuals, that Haggerty's father retired in January 2013, more than one and a half years prior to Haggerty's appointment, and that he was a friend of Puccio's prior to his appointment since he worked as a dispatcher. Additionally, Danielson states that Puccio lives in Andover, the property tax documents provided by the appellant are for a house that is uninhabitable due to a fire, and that Detective Mosner's background investigation confirmed that Puccio lived in Andover at the time of application including to the time he was appointed as a Police Officer.

CONCLUSION

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 removal of 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. *N.J.A.C.* 4A:4-6.1(a)7 states that an eligible may be removed from the list who has a prior employment history which relates adversely to the title.

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.

N.J.A.C. 4A:2-1.1(b) states that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

Initially, it is noted that the appellant's appeal is untimely. The appellant's appeal was postmarked January 19, 2016 and the prior decision is dated May 14, 2015. Nevertheless, the Commission will address the merits of this matter.

In this case, the appointing authority properly requested the removal of the appellant's name from the list. The appellant received a 50 working day suspension

beginning July 14, 2011 during his employment with Sussex County as a County Correction Officer based on sustained charges of incompetency, inefficiency, and failure to perform duties, conduct unbecoming a public employee, and other sufficient cause. The basis for the appellant's discipline was failure to follow the rules and regulations of the Sussex County Correctional Facility and logging false information into a Correction Facility log book. It has been well established that an eligible can be removed from promotional eligible lists based on a history of major disciplinary action. *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); *In the Matter of Howard Doherty, Correction Sergeant, Department of Corrections (PS7099I)*, Docket No. A-4959-01T1 (App. Div. April 5, 2004) (Removal from Correction Sergeant promotional list upheld for Senior Correction Officer with 25 minor disciplinary actions, 24 of which were imposed for attendance-related infractions); *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); *In the Matter of Albert S. Waddington, County Correction Sergeant (PC0349T), Camden County*, Docket No. A-568-99T2 (App. Div. December 5, 2000) (Removal from County Correction Sergeant promotional list upheld for County Correction Officer with a lengthy list of counseling reports, poor evaluations, reprimands, minor disciplinary sanctions and two major disciplinary actions over approximately 13 years).

In the present matter, the Commission finds no material distinction in the fact that the subject list is an open competitive list and the major disciplinary action occurred in another law enforcement title in a different Civil Service jurisdiction. As noted by the appointing authority, although the appellant attempts to minimize his involvement in the incident that resulted in him being disciplined, it cannot be ignored that he received a significant penalty of a 50 working day suspension. Moreover, the appellant received major discipline while serving in a law enforcement position in July 2011, approximately two years prior to his name being certified from the subject list. The Commission notes that Police Officers are law enforcement employees who 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). The public expects Police Officers to present a personal background that exhibits respect for the law and the rules. Therefore, the appellant's disciplinary action in and of itself demonstrates that he has an employment history that adversely relates to the title of Police Officer and warrants the removal of his name from the subject list.

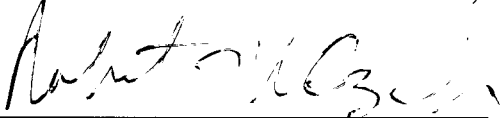
With respect to the appellant's assertion that his name was removed based on impermissible political reasons and nepotism, in cases of this nature where dual motives are asserted for an employer's actions, an analysis of the competing justifications to ascertain the actual reason underlying the actions is warranted. *See Jamison v. Rockaway Township Board of Education*, 242 N.J. Super. 436 (App. Div. 1990). In *Jamison*, *supra* at 445, the Court outlined the burden of proof necessary to establish discriminatory and retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish retaliation by a preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-retaliatory reason for the decision. In this case, other than his mere assertions that the Police Chief and Police Lieutenant are friends with certain family members or had prior work relationships, he has not presented any evidence that the selection of Haggarty or Puccio was based on impermissible reasons. Conversely, the appointing authority acted in compliance with Civil Service rules when it requested the removal of the appellant's name based on his major disciplinary action in another law enforcement title. Further, although the appellant asserts that Puccio is not a resident of Andover, the appointing authority has certified, and the appellant has not rebutted, that the property outside of the Township in his name is uninhabitable and that the Township's background investigation confirmed that he resided in Andover from the closing date of the announcement up to the time of appointment.

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 23rd DAY OF NOVEMBER, 2016



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Attachment

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