

B-38



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christie Monserrate,
Sheriff's Officer (S9999R),
County of Hudson

List Removal Appeal

CSC Docket No. 2016-3516

ISSUED: **NOV 30 2016**

(ABR)

Christie Monserrate, represented by Thomas J. Cammarata, Esq., appeals the attached decision of the Division of Agency Services (Agency Services), which upheld the appointing authority's removal of the appellant's name from the Sheriff's Officer (S9999R), County of Hudson (Hudson) eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Sheriff's Officer (S9999R), Hudson, on November 9, 2013, achieved a passing score, and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 2, 2014 and expires on May 1, 2017. On January 15, 2015, a certification containing 200 names, including the appellant as the 148th listed eligible, was issued to the appointing authority. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background report. Specifically, it asserted that the appellant had resigned in good standing in 2011 as part of a settlement agreement, which stipulated that the appellant was permanently barred from re-employment with Hudson. The appointing authority also cited the appellant's disciplinary history prior to her resignation as further grounds for her removal from the subject eligible list. In support, the appointing authority submitted correspondence referencing the reasons behind the appellant's removal and documentation related to the appellant's resignation, including a Final Notice of Disciplinary Action dated April 14, 2011, and a copy of the aforementioned settlement agreement. Agency Services upheld the appellant's removal from the subject eligible list, concluding that the incidents

which culminated in her resignation in 2011, offered a sufficient basis for her removal.

On appeal to the Civil Service Commission (Commission), the appellant argues that the appointing authority has not provided an adequate basis for her removal from the subject eligible list. Specifically, the appellant contends that the appointing authority incorrectly claimed that a February 2011 Stipulation of Settlement precluded her from seeking future employment with Hudson County or any agency or subdivision thereof. She submits that agreement and stresses that it allowed her to resign in good standing and did not contain any such prohibition on future employment. The appellant further argues that Agency Services improperly cited the underlying incidents surrounding her resignation in upholding her removal, claiming that it did not need to be addressed since it was not referenced in the appointing authority's removal request. The appellant also submits a copy of correspondence from the appointing authority to the Commission, which cites a permanent bar from re-employment in the said Stipulation of Settlement as the justification for her removal from the subject eligible list. The appellant also stresses that the Stipulation of Settlement explicitly provides that it does not constitute an admission of any allegations by either the appellant or Hudson County. In further support of her appeal, the appellant highlights her graduation from the Police Academy of Passaic County, her certification as a Security Officer by the State, and her experience as a teacher's assistant since her 2011 resignation.

In response, the appointing authority argues that it appropriately removed the appellant's name from the eligible list on the basis of an unsatisfactory background report. First, the appointing authority cites the alleged conduct that led to the appellant's resignation in good standing in 2011, which included an unreported personal relationship with a former inmate and inappropriate communications with that same individual. It submits correspondence related to the removal request, the Stipulation of Settlement, a Preliminary Notice of Disciplinary Action (Preliminary Notice) dated October 20, 2010, and a Final Notice of Disciplinary Action (Final Notice) dated April 14, 2011. Specifically, the appointing authority maintained that the appellant admitted to a personal relationship with a former inmate while he was incarcerated at the Hudson County Correctional Center (HCCC), acknowledged receiving phone calls from the same person on her personal cell phone while present at HCCC, and indicated that she furnished the inmate's mother with money in order to pay a fine for him. The appointing authority charged that those actions violated departmental rules and regulations and further alleged that the appellant provided false statements concerning the nature of the appellant's relationship with the inmate during the interview.¹ The appointing authority also claimed that it possessed recorded telephone conversations where the appellant acknowledged providing the same

¹ The specific charges set forth in the Final Notice included: (1) insubordination; (2) conduct unbecoming a public employee; (3) neglect of duty; and (4) other sufficient cause.

inmate with contraband. The appointing authority submits notes from telephone conversations that were recorded by the Hudson County Prosecutor's Office as part of its investigation of the appellant prior to her resignation in 2011.² Second, the appointing authority points to the appellant's prior disciplinary history as a whole, namely her four other suspensions. The Commission's records indicate that the appellant was disciplined on six occasions prior to her resignation from the Hudson Department of Corrections in 2011, including two major disciplinary actions. The first culminated in a 20-day suspension in 2006 that was reduced from 60 days as a result of a settlement. The second, in 2009, involved the appellant's alleged failure to complete required disciplinary reports and resulted in a 45-day suspension for the following disciplinary charges: (1) incompetency, inefficiency or failure to perform duties; (2) insubordination; (3) conduct unbecoming an employee; and (4) neglect of duties. In support, the appointing authority provides a copy of the appellant's February 27, 2015 statement, where she explains all of the incidents comprising her disciplinary history.

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 Commission to remove an eligible's name from an eligible list on the basis of a prior employment history that relates adversely to the position sought. *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.

In this matter, a review of the record indicates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list based on her prior employment history. The Commission has removed candidates from eligible lists under circumstances where the candidate, in his or her prior employment, resigned while disciplinary charges were pending or resigned in good standing in lieu of discipline and had a prior disciplinary history. For example, in *Strasser v. Camden County* (MSB, decided May 28, 1992), the removal of an eligible from an open competitive list based on the eligible's employment history which showed that he had resigned while disciplinary charges imposing a removal were pending was upheld. Moreover, in *In the Matter of Darren Grossman* (MSB, decided January 17, 2001), it was found that the appellant's employment history as a Police Officer with Jackson Township (Jackson) was sufficient to remove him from the Police Officer, Township of Marlboro, eligible list since he

² The appointing authority states that its investigators were allowed to take notes on transcribed telephone conversations involving the appellant that were recorded in the course of the Hudson County Prosecutor's Office's investigation, and it is therefore only able to provide those notes, rather than the transcripts of the telephone conversations.

resigned in good standing in exchange for Jackson not proceeding with disciplinary charges. The appellant's past employment record also reflected a three-day suspension as a Police Officer with East Orange. Similarly, in *In the Matter of Ralph Lubin* (MSB, decided May 8, 2001), the appellant's termination was recorded as a resignation in good standing as a result of a settlement agreement, whereby the appointing authority did not recommend or institute criminal proceedings against the appellant in exchange for the appellant resigning in good standing and withdrawing his grievance. The appellant's prior disciplinary history also included a five-day suspension. Compare, *In the Matter of Dennis Alba* (MSB, decided January 17, 2001). In *Alba, supra*, the appellant's name was restored to the Investigator Probation, Camden County Vicinage, eligible list on the basis that he did not have an adverse employment history. In so finding, it was noted the significance of the terms of the settlement agreement, wherein the appointing authority agreed to the withdrawal of the pending disciplinary charges.

Although the appellant correctly notes that the Stipulation of Settlement does not bar her reemployment by Hudson, the underlying circumstances surrounding the appellant's resignation from her position as a County Correction Officer in 2011 support the appointing authority's removal of the appellant from the subject eligible list due to an unsatisfactory background. Importantly, while the Stipulation of Settlement does not constitute an acquiescence to the disciplinary charges levied against the appellant in 2010, she has admitted to conduct which could properly be considered by the appointing authority in the instant matter. The appellant, in explaining her disciplinary history in a February 27, 2015, letter to the appointing authority, admits to improper telephone contact with a former inmate. In 2010, the appellant told an investigator that those calls occurred while she was at HCCC, that she had a friendship with that former inmate which she did not report, and that she provided the same inmate's mother with money to pay a fine assessed against that inmate. Furthermore, the appellant's disciplinary record from her time as a County Correction Officer features two major disciplinary actions, including a suspension which stemmed from the appellant's alleged failure to complete reports which resulted in three inmates being released from lockup without properly facing charges for incidents within the facility. The job specification for a Sheriff's Officer includes duties such as maintaining order and security in the courtroom, serving court processes, criminal identifications, and apprehension of violators of the law. A Sheriff's Officer may also be assigned to perform other law enforcement or public safety related duties outside the courtroom, including criminal investigations, patrol duties, and public safety/service assistance. Clearly, the appellant's prior disciplinary history, together with her admissions to concealing a personal relationship with an inmate from her former employer, providing money to that inmate's mother to pay a fine for him, and routinely taking calls on a personal cell phone within the confines of the correctional facility from that same individual, reflects poorly on the appellant's ability to perform these law enforcement duties. Accordingly, the appellant's

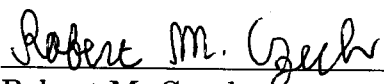
adverse employment history provides a sufficient basis to remove the appellant's name from the subject eligible list.

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 23RD DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Christie Monserrate
Thomas J. Cammarata, Esq.
Elinor M. Gibney
Kelly Glenn
Records Center



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

AGENCY SERVICES

P. O. Box 313

Trenton, New Jersey 08625-0313

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

March 28, 2016

Thomas J. Cammarata
Cammarata, Nulty & Garrigan, LLC
549 Summit Ave
Jersey City, NJ 07306

RE: Removal of Name from Eligible List – Christie Montserrat

Title: Sheriffs Officer

Jurisdiction: Hudson County

Symbol: S9999R

Certification No: OL150067

Certification Date: 1/15/15

Dear Mr. Cammarata:

This is in response to your correspondence contesting the removal of your client's name from the above-referenced eligible list.

The Appointing Authority requested removal of your client's name in accordance with N.J.A.C. 4A:4-4.7(a)11, which permits the removal of an eligible candidate's name from the eligible list for "valid reasons as determined by the Chairperson of the Civil Service Commission or designee".

In support of its decision, the Appointing Authority provided a Background Investigation Report which included a copy of the Settlement Agreement between your client and the Hudson County Corrections Office. The Agreement calls for your client to resign in good standing by foregoing disciplinary action tendered against her.

You argue that the resignation in good standing should not be used as a reason to remove your client from the list and that the Settlement Agreement does not preclude a rehire of your client in the same or different capacity; however, it is not the resignation, but the incident(s) which led to that result that is the cause utilized by the Appointing Authority to have your client's name removed. You do not address the underlying incident(s) in your appeal.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your client's name to the eligible list. Therefore, the Appointing Authority's decision to remove your client's name has been sustained and the appeal is denied.

New Jersey is an Equal Opportunity Employer

www.state.nj.us/csc

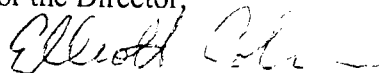
In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Elliott Cohen
Human Resource Consultant
Local Placement Services

Frank X. Schillari
Hudson County Sheriff
595 Newark Avenue
Jersey City, NJ 07306

