



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Virginia Rocha, Human Services Specialist 2 (PC0674S), Ocean County Board of Social Services

CSC Docket No. 2016-1794

List Removal Appeal

ISSUED: NOV 30 2016 (CSM)

Virginia Rocha appeals the removal of her name from the eligible list for Human Services Specialist 2 (PC0674S), Ocean County Board of Social Services, on the basis of an employment history which relates adversely to the title.

The appellant's name appeared on the subject list that expires on November 5, 2017. On April 21, 2015, the appellant's name was certified (PL150442) in the 4th position. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that she had an employment history which relates adversely to the title. Specifically, the appointing authority indicated that the appellant received a written reminder on September 1, 2011, official written reprimands on July 12, 2012 and May 9, 2013 for poor work performance, insubordination, and breach of confidentiality and a five-day suspension on November 13, 2013 on charges of incompetency, inefficiency, failure to perform duties, insubordination, conduct unbecoming a public employee, and neglect of duty.

On appeal, the appellant states that she has a satisfactory employment record. Specifically, she notes that she has had perfect attendance for the first quarter of 2015 and that the material submitted by the appointing authority to uphold her removal from the list was from a period two years prior to the certification. Further, the appellant claims that the appointing authority took no action to remove her name from the list until she was out on approved Family Medical Leave Act (FMLA) leave. With respect to the disciplinary action in 2013, the appellant states that the appointing authority had changed its protocol on how

it operates which resulted in her addressing all inquiries for walk-in clients for an extended period of time. She explains that the incident which resulted in her being disciplined was based on an allegation that she made a client wait over two hours to see her, which resulted in the client grabbing her and verbally attacking her. The appellant maintains that the disciplinary action taken against her at that time was unjustified. Additionally, the appellant maintains that there is no pending disciplinary action against her and if there was, it could not be utilized to support a decision to remove her name from the list.

In response, the appointing authority, represented by Maria La Face-Farley, Associate Counsel, Human Resources, states that the appellant began having serious work performance issues after she completed her working test period as a Human Services Specialist 1 on May 2, 2011. In this regard, it notes that this resulted in her receiving a written reminder on September 1, 2011. However, the appellant's work performance continued to deteriorate which resulted in her receiving official written reprimands on July 12, 2012 and May 9, 2013 for poor work performance, insubordination and breach of confidentiality. The appointing authority emphasizes that the reminder and the official written reprimands document a pattern of insubordination toward supervisors and mistreatment of clients. Specifically, clients complained that the appellant was rude, intimidating and unprofessional. As a result of her continued performance and behavior issues, an administrative review was conducted on the appellant which resulted in her being charged with incompetency, inefficiency, failure to perform duties, insubordination, conduct unbecoming a public employee, and neglect of duty, which resulted in receiving a five-day suspension on November 13, 2013. Moreover, the appointing authority notes that there is a pending disciplinary action against the appellant for a ten-day suspension for an incident that occurred in April 2015 where the appellant again was cited for several incidents of inappropriate and unprofessional conduct between December 2014 and March 2015.

It is noted that the appellant was provided all of the documentation submitted by the appointing authority in support of its request, but she did not submit any additional information or argument in response for the Commission to review.

## 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.

In this case, the appellant received a written reminder due to her lateness and work performance in 2011. Thereafter, the appellant received counseling on November 2, 2011 for failure to adhere to supervisory instruction and received an official written reprimand on July 12, 2012 for producing less work than is required, failure to interview clients that were waiting to be seen, and arguing with her supervisor. On May 9, 2013, the appellant received another official written reprimand for disregarding supervisory direction. Further, the appellant received a five-day suspension in November/December 2013 based on an administrative review of her continued insubordinate and unprofessional behavior and treatment of clients. Additionally, the appellant was charged with conduct unbecoming a public employee, incompetency, inefficiency or failure to perform duties, neglect of duties, and insubordination for unacceptable behavior toward clients, abandoning her work, and insubordinate behavior for incidents occurring between December 2014 and March 2015. While the appellant argues that her minor discipline does not warrant the removal of her name from the list, the Commission finds that the totality of this record evidences that her name should be removed. 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. In these situations, it has found that an applicant with a minor disciplinary history, such as attendance infractions, could be bypassed by an appointing authority in its discretion under *N.J.A.C.* 4A:4-4.8. See *In the Matter of Laura Verdi* (CSC, decided July 30, 2008) (Commission determined that attendance issues provided by the appointing authority, for which the appellant never received major discipline, were not sufficient to remove her name from the list). However, in this case, the appellant was appointed as a Human Services Specialist 1 on February 4, 2011. During her approximately four years of service up to the time when the list was certified in May 2015, she was counseled for attendance and work performance issues, received official written reprimands for overall poor work performance, insubordination, breach of client confidentiality, neglect of duty, incompetency, inefficiency or failure to perform duties, and conduct unbecoming a public employee. Additionally, she was suspended for five days in November and December 2013 based on these same charges and has charges pending against her based on inappropriate conduct and insubordinate conduct that occurred between December 2014 and March 2015, which is prior to issuance of the subject certification.

The appellant's repeated behavior over the course of the four years of employment prior to the certification of the list demonstrate a lack of maturity and

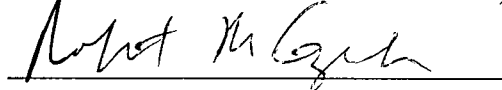
judgment essential to a position such as Human Services Specialist 2. Moreover, the appellant's unwillingness to accept responsibility for her documented poor work history adversely relates to a higher level position in the title series as it is evident that she continues to have performance issues in the entry-level title. Accordingly, based on the totality of the record, the appellant's name was properly removed 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 23<sup>RD</sup> DAY OF NOVEMBER, 2016



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