



**STATE OF NEW JERSEY**

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

In the Matter of W.M., Cottage  
Training Supervisor (PS4067K),  
Department of Human Services

CSC Docket No. 2020-1754

List Removal

**ISSUED: JULY 31, 2020 (DASV)**

W.M. appeals the removal of his name from the eligible list for Cottage Training Supervisor (PS4067K), Department of Human Services, due to an unsatisfactory employment record.

By way of background, the appellant appeared on the Cottage Training Supervisor (PS4067K), Department of Human Services, eligible list, which promulgated on July 25, 2019 and expires on July 24, 2022. The appellant's name was certified on August 5, 2019. In disposing of the certification, the appointing authority requested that the appellant's name be removed due to an unsatisfactory employment record. It submitted a Final Notice of Disciplinary Action (FNDA), dated February 7, 2019, which indicated the appellant's suspension for 10 working days on charges of falsification, conduct unbecoming a public employee, discrimination that affects equal employment opportunity, including sexual harassment, other sufficient cause, and for the violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Specifically, an investigation found that, while serving as a Cottage Training Technician in 2018, the appellant had called a co-worker a "bitch" twice in 2018, but he had denied it. It is noted that agency records reveal that the appellant had been appointed provisionally pending promotional examination procedures as a Cottage Training Supervisor effective February 2, 2019.

However, due to the disciplinary action, he was returned to his permanent title of Cottage Training Technician effective February 1, 2020.<sup>1</sup>

On appeal to the Civil Service Commission (Commission), the appellant indicates that he was a provisional Cottage Training Supervisor for a year, and prior to this appointment, he was interviewed by three members of management. Despite knowledge of the disciplinary charge, which was pending at the time, the appointing authority offered him the provisional position. Moreover, the appellant states that the appointing authority began to interview for the permanent Cottage Training Supervisor position. He was allegedly told by an Assistant Supervisor of Professional Residential that “[y]ou probably won’t get one since you have been in your provisional position for a while.” The appellant states that neither him nor the two other provisional Cottage Training Supervisors received an interview. However, the two provisional employees received permanent appointments and the appellant did not because he “had a disciplinary charge within the last three years.” The appellant emphasizes that he has been in the provisional title for a year and has “done remarkably well in performing its duties.” He has “also continued to remain professional while doing this.” He was not informed that in order to keep his position, he needed the disciplinary charge cleared. Rather, he was only advised that he needed to pass the promotional examination to be considered for a permanent appointment. The appellant notes that a Cottage Training Supervisor had been promoted to a Head Cottage Training Supervisor position despite a pending disciplinary charge.<sup>2</sup>

Moreover, the appellant claims that supervisory employees and management told him “countless times” that they did not expect him “to do as well” as he did on the promotional examination. They “predicted” that he would “not last long” in his provisional position. The appellant contends that management expected him to be unprofessional, although he “did totally the opposite.” He asserts that “the odds” are against him and that his “sexuality has made him a target.” The appellant states that he is “a gay black male and they continuously associate [him] with negative terms . . . rumors stating [he is] with attitude, aggressive and full of drama.” He recounts that, in 2015, an employee who was training him “started gay bashing” him and said he was acting like a bitch.” The appellant submits that he filed a complaint with the Office of Equal Employment Opportunity. The appellant also lists other incidents, including when a supervisor said that he “did rank well, but he is a handful” and when attempts were made to provoke him to be unprofessional. In

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<sup>1</sup> The subject certification was fully disposed on June 2, 2020. However, appointments were made on February 1, 2020.

<sup>2</sup> It is noted that the appellant does not present evidence of a pending disciplinary charge for the person he has identified. However, agency records indicate that the individual received a Final Notice of Minor Disciplinary Action (CWA) in June 2019 and was appointed to the higher title in October 2019. Minor discipline is defined under Civil Service rules as a formal written reprimand or a suspension or fine of five working days or less. *See N.J.A.C. 4A:2-3.1(a)*.

conclusion, the appellant states that it is his “opinion [that] this is a collective effort to strip [him] from of his [Cottage Training Supervisor] title so they can give it to someone they prefer and ranked under [him]. They are trying to blacklist [him] for all the wrong reasons.” The appellant maintains that, during the time of his provisional appointment, he received “honorable and commendable praise for [his] work ethics and efforts.”

In response, the appointing authority acknowledges that the appellant was appointed provisionally to the subject title. Upon receipt of the certification, it states that it reviewed all of the disciplinary history of the eligibles from 2017 through 2019, which is its standard practice. The appointing authority removed six eligibles, including the appellant, who were issued a FNDA and bypassed one eligible who had a pending Preliminary Notice of Disciplinary Action (PNDA). Moreover, the appointing authority explains that it did not interview any of the provisional employees who were listed on the subject certification since it previously interviewed them for the provisional position. Furthermore, it indicates that the appellant was removed from the subject eligible list because of the FNDA issued against him in 2019 and he received a 10 working day suspension.<sup>3</sup> As for the appellant’s claim regarding the appointment of a Head Cottage Training Supervisor, the appointing authority responds that in disposing of a recent certification for that title, it removed one individual due to a FNDA and no individuals had a pending PNDA. It is noted that this certification includes the person whom the appellant identified and the person was appointed.

## 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 individual from an eligible list who has a prior employment history which relates adversely to the position sought. Additionally, *N.J.A.C.* 4A:4-6.3(b) 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.

Initially, it is noted that that the Commission is not bound by criteria utilized by the appointing authority and must decide each list removal appeal on the basis of the record presented. See *In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005), *In the Matter of Debra Dygon* (MSB, decided May 23, 2000), and *In the Matter of Lisa Brown* (CSC, decided October 4, 2017) (The appointing authority’s policy was that a major discipline sanction serves as a bar to an appointment from an eligible list for three years. The appellant received a FNDA within three years prior to the subject list’s promulgation. While the Commission noted that it was not bound by the appointing authority’s policy, it found that the relative recent history of the appellant’s disciplinary action was sufficient cause for removal). As such, the

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<sup>3</sup> Agency records indicate that the appellant has other major discipline in his employment history.

appointing authority's standard practice in the instant matter does not determine whether the Commission will restore or remove the appellant's name from the subject eligible list.

Nonetheless, in this case, the appointing authority removed the appellant from the subject eligible list based on the 10 working day suspension that he received. The appellant received this disciplinary action while serving as a provisional Cottage Training Supervisor in 2019, just six months prior to his certification for the title. Furthermore, regardless of whether the incident occurred when the appellant was still serving as a Cottage Training Technician, the charges against him are recent, serious, and clearly adverse to the position sought which is a supervisory position in the title series. *See e.g., 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 addition, it is noted that the appellant's prior disciplinary history which consists of other major discipline does not support granting his appeal. The fact that the appointing authority appointed the appellant provisionally as a Cottage Training Supervisor when the 2019 charges had been pending against him does not provide the appellant with any vested right to the position. In that regard, it is well settled that a provisional employee, whether provisional for one day, one year or seven years, does not have a vested right to a permanent position.

Furthermore, the appellant claims that the appointing authority promoted an employee despite pending disciplinary charges. However, the individual was promoted to a different title than the subject title and the appellant's claim is unsubstantiated. The appointing authority's response in that regard is consistent with agency records, namely, that the identified individual did not receive a recent FNDA. It is noted that a FNDA is usually utilized for a major disciplinary action. Minor discipline would not ordinarily remove a candidate from an eligible list. *Compare, In the Matter of Thomas DiOrio* (CSC, decided March 11, 2009) (Commission noted that even though a prior minor disciplinary history is generally not sufficient to remove a candidate from a list, the appellant's statement that he utilized a significant amount of sick days prior to his resignation because if he did not use them he would receive compensation for them anyway warranted his removal from the list). Additionally, the appellant alleges that he has been treated unfairly due to his sexual orientation. Based on the record before the Commission, there is absolutely no evidence to suggest that the appellant was removed due to a discriminatory reason. The appointing authority indicates that it applied an equal standard to the eligibles regarding their disciplinary histories, which has not been disputed, and the appellant submits that neither him nor the other provisional employees were interviewed. The appointing authority states that the provisional employees had already been interviewed, and thus, the appellant was treated the same in that respect. It is noted that an appointing authority has the discretion to

conduct interviews. *See In the Matter of Daniel Dunn* (CSC, decided August 15, 2012) (It is within the appointing authority's discretion to choose its selection method, *i.e.*, whether or not to interview candidates and ask hypothetical questions). However, while the Commission does not find that the appointing authority's removal of the appellant from the subject eligible list was due to a discriminatory motive or other invidious reason, if the appellant believes he has been subject to a violation of the State Policy based on the other incidents he describes, he may file a discrimination complaint with his appointing authority pursuant to *N.J.A.C. 4A:7-3.2*.

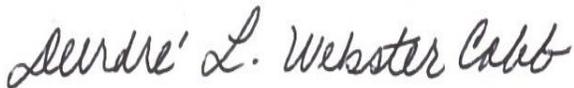
Therefore, based on the foregoing, the Commission finds that the appointing authority has presented a sufficient basis to remove the appellant's name from the eligible list for Cottage Training Supervisor (PS4067K), Department of Human Services. Accordingly, the appellant has not met his burden of proof.

### 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 29<sup>TH</sup> DAY OF JULY, 2020




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