



STATE OF NEW JERSEY

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

In the Matter of John P. Decker,
Police Captain (PM1821W),
Township of Jackson

CSC Docket No. 2021-1045

List Removal

ISSUED: MARCH 26, 2021 (DASV)

John P. Decker, represented by Jeffrey D. Catrambone, Esq., requests that his appeal of the removal of his name from the eligible list for Police Captain (PM1821W), Township of Jackson, due to an unsatisfactory employment record be held in abeyance.

By way of background, the appellant filed for the promotional examination for Police Captain (PM1821W), Township of Jackson, which was issued on July 1, 2018 with an application due date of July 23, 2018 and a closing date of September 30, 2018. The examination was open to employees in the competitive division who were currently serving as a Police Lieutenant and possessed an aggregate of one year of continuous permanent service as of the closing date. The appellant was found eligible for the examination and appeared on the resulting eligible list, which promulgated on March 14, 2019 and expires on March 13, 2022. The appellant's name was certified on October 14, 2020.¹ 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, indicating that the appellant had been removed as a Police Lieutenant, effective May 21, 2018, on charges of incompetency, inefficiency or failure to perform duties, insubordination, inability to perform duties, conduct unbecoming a

¹ The appellant's name was also certified at the time of the first certification of the subject eligible list on February 26, 2020. The appellant was listed as the second ranked eligible, and the first ranked eligible received the only appointment,

public employee, neglect of duty, other sufficient cause, and a violation of departmental rules and regulations. It is noted that the appellant filed an appeal of his removal with the Civil Service Commission (Commission) and the Office of Administrative Law (OAL). He was granted a hearing at the OAL. However, the appellant withdrew his appeal, which was noted as withdrawn by the Commission at its June 3, 2020 meeting, and removed from the hearing calendar.

In the instant matter, the appellant indicates that he filed a lawsuit against the appointing authority in the Superior Court of New Jersey, alleging violations of the New Jersey Conscientious Employees Act (CEPA), *N.J.S.A. 34:19-1, et seq.*, and the New Jersey Civil Rights Act (CRA), *N.J.S.A. 10:6-1, et seq.* He indicates that he intends to amend his complaint to include the removal of his name from the Police Captain (PM1821W), Township of Jackson, eligible list and requests that the Commission “hold this matter in abeyance to allow [him] to elect his remedies and his forum in Superior Court.” The appellant further states that should he “be successful in his claims in Superior Court under CEPA and/or the CRA,” he “anticipate[s] coming back” to the Commission for “appropriate equitable relief.”

In response, the appointing authority, represented by Ryan S. Carey, Esq., recounts the procedural history of the appellant’s disciplinary appeal which it emphasizes that the appellant elected to withdraw. Therefore, the appointing authority maintains that the appellant “was and remains a terminated former police officer of Jackson Township.” Thus, pursuant to Civil Service rules, it submits that the appellant is not eligible for appointment as a Police Captain. Accordingly, there is no basis to hold this matter in abeyance pending the appellant’s lawsuit.

In reply, the appellant states that his lawsuit specifically requests his reinstatement as a remedy. Therefore, if he prevails, the appellant contends that he would be eligible for appointment as a Police Captain. As such, he reiterates his request that the within matter be held in abeyance or placed in “inactive” status.

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. *N.J.A.C. 4A:4-6.1(a)5* provides that a person may be denied examination eligibility or appointment when he or she has been removed from the public service for disciplinary reasons after an opportunity for a hearing. Moreover, *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.

Upon review, the Commission finds no basis to hold this matter in abeyance, and for the following reasons, it upholds the appellant's removal from the subject eligible list. Initially, the appellant should have been denied examination eligibility and removed from the promotional subject eligible list as he was removed from employment prior to the September 30, 2018 examination closing date and the March 14, 2019 promulgation of the list. The appellant was removed from his Police Lieutenant position effective May 21, 2018. Thus, the appellant no longer met the announced examination requirement of currently serving as a Police Lieutenant.² Moreover, *N.J.A.C. 4A:4-4.7(a)8* indicates that an eligible's name may be removed from a list due to the "[d]iscontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to an appropriate representative of the [Commission], that his or her name be restored to the promotional list." In this case, the appellant cannot return to the unit scope "within current *continuous* service" as his employment was terminated. In addition, he withdrew his appeal of his removal from employment with the Commission. As set forth above, the appellant was granted a hearing at the OAL and did not pursue his administrative remedies. Therefore, in addition to the operation of *N.J.A.C. 4A:4-4.7(a)8*, *N.J.A.C. 4A:4-6.1(a)5* clearly provides a basis to deny the appellant an appointment from the subject eligible list since he has been removed from the public service for disciplinary reasons after an opportunity for a hearing. As such, it is not necessary to determine whether his employment record adversely relates to the position sought since his removal from the subject eligible list is authorized under *N.J.A.C. 4A:4-6.1(a)5*.

Accordingly, there is not a sufficient basis to hold this matter in abeyance. Rather, the Commission finds that the aforementioned regulatory provisions justify the appellant's removal from the Police Captain (PM1821W), Township of Jackson, eligible list and upholds the appointing authority's request for his removal. While the appellant is certainly free to pursue his claims under any and all applicable forums, in this administrative forum, it is undisputed that he was removed from employment and did not pursue his appeal of his removal after being afforded a hearing. Consequently, his removal from the subject eligible list is appropriate.

² *N.J.A.C. 4A:4-2.9(d)* states that "[e]mployees who have been removed for disciplinary reasons or indefinitely suspended pending criminal charges, and are thereafter exonerated of all charges, shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists, if the suspension or removal resulted in the employee's non-participation in the promotional examination." In this case, the appellant has not been exonerated.

ORDER

Therefore, it is ordered that the appellant's request and his 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 24TH DAY OF MARCH, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
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