



**STATE OF NEW JERSEY**

In the Matter of Evan Androcy, Police Officer (Regular Reemployment list), Lacey Township	:	<b>FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION</b>
	:	
	:	
	:	
	:	
	:	
CSC Docket No. 2021-1429	:	List Removal Appeal
	:	
	:	

**ISSUED: AUGUST 6, 2021 (JET)**

Evan Androcy, represented by Robert A. Ebberup, Esq., appeals the removal of his name from the Regular Reemployment List for Police Officer, Lacey Township, on the basis of an unsatisfactory background report.

As background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) removing the appellant from his position as a Police Officer, effective December 14, 2017. Specifically, the appointing authority indicated in the FNDA that on October 13, 2017, it responded to the appellant’s residence regarding a Domestic Violence incident, and it was determined that the appellant was the victim of a Simple Assault. The FNDA also indicated that the appellant and his spouse appeared in Superior Court and filed for separate Temporary Restraining Orders (TROs) against each other, which were granted on October 30, 2017. The FNDA further indicated that on November 14, 2017, the Superior Court ordered a Final Restraining Order against the appellant.<sup>1</sup> The appellant appealed to this agency and the removal matter was transferred to the Office of Administrative Law (OAL) for a hearing. The matter was resolved by way of a February 25, 2019 settlement agreement, which was acknowledged by the Civil Service Commission (Commission). *See In the Matter of Evan Androcy, Lacey Township, Police Department* (CSC, decided May 22, 2019). Specifically, the settlement agreement provided, in pertinent part, that:

<sup>1</sup> The record reflect that the TRO against the appellant’s spouse was dismissed on November 14, 2017.

If within one (1) year of entry of this settlement, the FRO presently entered against [the appellant] is dismissed or vacated then the [appointing authority] shall place [the appellant] on [a regular reemployment list] for rehire as a Police Officer for the first available position.<sup>2</sup>

Thereafter, on February 20, 2020, the FRO was dismissed, and the appellant notified the appointing authority of such information.

The appellant's name appeared on the November 17, 2020 (OL200541) regular reemployment list<sup>3</sup> for Police Officer, Lacey Township. The appointing authority conducted a background investigation, and it removed the appellant on the basis of an unsatisfactory background report. Specifically, the appointing authority indicated that, by letter dated March 2, 2021, the Ocean County Prosecutor's Office, did not consider it appropriate to rehire the appellant pursuant to the *Brady-Giglio* policy.<sup>4</sup> By letter dated April 7, 2021, the appointing authority notified the appellant that the appellant, based on the *Brady-Giglio* guidelines, would not be rehired as a Police Officer, as the FRO would have to be shared with the court and defense counsel in any matter where he would be required to testify as a Police Officer, as such information would likely compromise the prosecution of any case in which he was involved.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the appointing authority has not complied with the February 25, 2019 settlement agreement, which provides for his reemployment as a Police Officer in Lacey Township if the FRO issued against him was dismissed within one year of the date of the settlement agreement. The appellant explains that the conditions listed in the settlement agreement require the appellant to successfully complete training, weapons qualifications, psychological testing and to cooperate with an ongoing internal investigation. The appellant contends that the appointing authority did not specifically state in the settlement agreement that such conditions could be used to remove the appellant from the list. The appellant adds that the appointing authority only references the background investigation in order to remove the

---

<sup>2</sup> The settlement agreement also indicated that the appellant resigned in good standing in the face of the disciplinary sanction.

<sup>3</sup> Although the settlement agreement indicates "special reemployment list," the appropriate language should have indicated "regular reemployment list."

<sup>4</sup> The *Brady-Giglio* policy is based on decisions issued in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). The *Brady-Giglio* guidelines were issued as county policies pursuant to the Attorney General's Law Enforcement Directive No. 2019-6. In short, these guidelines were issued to provide a more efficient means for the criminal courts to obtain and analyze exculpatory evidence in cases. In essence, the prosecutor indicated that the appellant's character, if required to testify in court as a Police Officer, would potentially be called into question as he would be required to disclose to the court the FRO that was issued against him. It is noted that the policy does not specifically apply to Civil Service law and rules.

appellant from the list, which is not part of the conditions listed in the settlement agreement. As such, the appellant asserts that the reasons provided by the appointing authority for the removal are broad and vague and should not be used as justification for the removal. Moreover, the appellant maintains that, based on the terms of the settlement agreement, he should be restored to the list and his appointment should be effectuated.

In reply, the appointing authority relies on the submissions and documentation it provided with respect to the appellant's removal. It does not provide any other arguments or information in response to the appeal.

### CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)11, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows for the removal of an eligible's name from an eligible list for other valid or sufficient reasons. Removal for other valid or 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 an appointment. *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:4-7.10(b) provides that upon recommendation of the appointing authority that that such reemployment is in the best interest of the service, the Chairperson or designee shall place the employee's name on a reemployment list.

Initially, the appointing authority argues that it removed the appellant as consistent with the aforementioned *Brady-Giglio* guidelines. The Commission determines that, although the *Brady-Giglio* guidelines provide pertinent information to law enforcement agencies from the Attorney General's Office regarding exculpatory evidence, the Commission is not bound by such guidelines. The Commission is not a law enforcement agency and, as such, its authority is not based on policies implemented by the Attorney General's Office. Rather, the Commission's authority to implement Civil Service law and rules is provided by Title 4A of the New Jersey Administrative Code and Title 11A of the New Jersey Statutes. Although the *Brady-Giglio* guidelines are relevant to law enforcement agencies, Civil Service law and rules are not specifically applicable to exculpatory evidence as provided by the *Brady-Giglio* guidelines, nor applicable to testimony provided by Police Officers in criminal and municipal court proceedings. Rather, list removal appeals are decided by the Commission on a case by case basis pursuant to the above noted Civil Service law and rules.

In this matter, the record reflects that the appellant entered into a February 25, 2019 settlement agreement, which was acknowledged by this agency. *See Androcy, supra*. As noted above, the appellant agreed in the February 25, 2019 settlement agreement that he resigned in good standing, and to the contingency that if the FRO issued against him was dismissed, his name would appear on a regular reemployment list for the first available position for Police Officer within one year of the date of the settlement agreement. The record reflects that the FRO was dismissed on February 20, 2020, and pursuant to the settlement agreement, the appellant's name appeared on the November 17, 2020 (OL200541) list for Police Officer. Thereafter, the appointing authority conducted an updated background investigation and removed the appellant based on the unsatisfactory background report with respect to the FRO that was issued against him.

With respect to the appellant's contentions that the settlement agreement was acknowledged by this agency, such information does not establish his contentions that the removal in this matter was improper. In this regard, the Commission acknowledges settlement agreements to allow for the resolution of matters properly before it. The Commission also reviews settlement agreements to ensure compliance with Civil Service law and rules. If a term of the agreement is later violated by either party, the Commission has jurisdiction to enforce the term. *See e.g., In the Matter of Donald Hickerson* (MSB, decided, September 10, 2002). *See also, In the Matter of Police Officer and Superior Officer, Essex County* (1991 Layoffs), Docket No. A-5755-94T5 (App. Div. April 22, 1996). In this matter, the Commission finds that the settlement agreement was properly entered into by the parties, and there is nothing in the record that indicates that the appointing authority has not acted in good faith or in non-compliance.

In this matter, the Commission finds that the settlement agreement did not mandate that the appellant was entitled to an appointment. Rather, the settlement agreement contains contingencies that were required to be satisfied prior to the appellant's rehire, including that the agreement "shall be construed under, subject to, and governed by the laws of the State." Such language includes Civil Service law and rules. Although the appellant argues that the settlement agreement does not specifically indicate that the appointing authority was authorized to conduct a background investigation, Civil Service rule and laws do not prevent an appointing authority from conducting a background investigation prior to an appointment, and the settlement agreement does not specifically preclude the appointing authority from conducting a background investigation prior to an appointment from the regular reemployment list. Although the appellant was previously employed at the appointing authority as a Police Officer and his appearance on a regular reemployment list for that title was pursuant to a settlement agreement, the appointing authority was authorized to conduct an updated background investigation prior to the appellant's appointment from the regular reemployment list. The Commission has consistently determined on numerous occasions that

appointing authorities are authorized to conduct background investigations in order to assist them during the hiring process to determine a candidate's suitability for employment.<sup>5</sup> Moreover, the fact that the appellant's name was restored to a regular reemployment list does not automatically entitle him to an appointment.

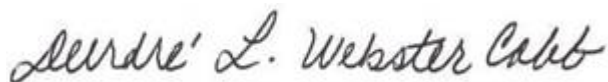
The record reflects that the appointing authority, during its updated background check, was advised by the Ocean County Prosecutor's Office of its opinion that the appellant should not be rehired based on issues related to *Brady-Giglio*. Clearly, such issues bear on appellant's ability to fully discharge his duties as a Police Officer should he be rehired. As such, this impediment is certainly a sufficient reason for removal from an employment list. Moreover, the appointing authority, absent an explicit statement in the settlement to the contrary, was not foreclosed from using valid reasons uncovered during an updated background check to not appoint the appellant from the regular reemployment list, as appointment from that list is wholly at the discretion of the appointing authority and would not otherwise be subject to review by the Commission. Therefore, there is 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 4<sup>TH</sup> DAY OF AUGUST, 2021



---

Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

---

<sup>5</sup> It is especially important for appointing authorities to conduct such background investigations, especially for employment in law enforcement. In this matter, it would have been irresponsible for the appointing authority to have not conducted the updated background check, as it was imperative for it to ascertain if there was any intervening disqualifying factors between the time of the appellant's resignation and his potential rehiring.

Inquiries  
and  
Correspondence

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

c: Evan Androcy  
Robert A. Ebberup, Esq.  
Veronica Laureigh  
Division of Agency Services  
Records Center