



STATE OF NEW JERSEY

In the Matter of William Nielsen,
County Correctional Police
Lieutenant (PC1331A), Cape May
County Sheriff's Office

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

CSC Docket No. 2023-1205

List Removal Appeal

ISSUED: March 15, 2023 (SLK)

William Nielsen appeals the decision to remove his name from the County Correctional Police Lieutenant (PC1331A), Cape May County Sheriff's Office (Sheriff's Office) eligible list on the basis of an unsatisfactory employment record.

The appellant took the promotional examination for County Correctional Police Lieutenant (PC1331A), which had a September 23, 2019, closing date, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified (PL221339) and he was ranked as the fifth candidate. In seeking his removal, the Sheriff's Office indicated that the appellant had an unsatisfactory employment record. Specifically, the Sheriff's Office indicated that the appellant had sustained two major disciplines. The first major discipline involved a February 4, 2018, incident where he acted unprofessionally by using offensive and derogatory language towards inmates. Further, in February and March 2018, the appellant had been found to supervise in an unprofessional manner by making intimidating comments to an inmate and having continued contact with the same inmate when directed to avoid such contact. The appellant received an eight working day suspension for these infractions. The second major discipline involved unauthorized and improper investigation of a Superior Officer in or about October 2017 through 2018 during work-time for the purpose of aiding a personal lawsuit against the appointing authority and the subsequent failure to follow the chain of command. The appellant received a 25 working day suspension for this discipline. The appellant appealed both suspensions to the Civil Service Commission (Commission), and these

matters have been transmitted to the Office of Administrative Law (OAL) as contested cases, where they are pending.

On appeal, the appellant presents that he was one of two candidates who were interviewed for a position in the subject title as the other candidates retired, which led to the third-ranked candidate's appointment. Therefore, he indicates that he is the only potential candidate to remain on the list. The appellant highlights that he has not served any disciplinary time as he appealed his suspensions, which are currently pending at the OAL. He emphasizes that at the time of his interview, these pending disciplines did not remove his name from the list, but rather his name was certified, and he was afforded the opportunity to interview. However, the appellant contends that one month later, the Sheriff's Office unfairly removed him as he was the only remaining eligible and there was no new discipline or other information which justified his removal. He believes that he was unfairly removed from the list due to pending litigation that he has against Cape May County and certain employees.

In response, the Sheriff's Office, represented by Kyle D. Weinberg, Esq., presents that after it interviewed the two candidates that either had not retired or were not in the process of retiring, it promoted the other candidate and it removed the appellant because he had two major disciplines that were sustained for a total suspension time of 33 days. It highlights that since the appellant was promoted to County Correctional Police Sergeant (Sergeant) in March 2015, which is less than eight years ago, he had 10 internal affairs investigations against him, which led to six being sustained. The Sheriff's Office states that of the six investigations that were sustained, the appellant was issued five Preliminary Notices of Disciplinary Actions (PNDA), which led to two hearings for the PNDAs. After the departmental hearings, the appellant was issued an eight-day suspension and a 25-day suspension for the incidents as described above. The Sheriff's Office argues that the appellant's extended disciplinary history indicates that he has failed to meet the high standards for a law enforcement officer as the two sustained disciplines demonstrate his lack of respect for both the law and internal rules. It asserts that although the appellant interviewed for the subject position, this does not signify that he can be entrusted with the additional responsibilities and heightened supervisory role of the subject title that public trust and safety demands. Therefore, the Sheriff's Office contends that it was within its authority to remove the appellant from the subject promotional eligible list.

In reply, the appellant states that the Sheriff's Office's citation of the investigations that have been opened against him since he was promoted to Sergeant in 2015 is misleading as these investigations began in 2018, which was three years after his promotion to Sergeant. He indicates that the sustained investigations all took place after he truthfully reported during a workplace investigation, and that these disciplinary charges were in retaliation for his protected conduct. He submits

a lawsuit that he filed against Cape May County and certain employees where he alleges that he was retaliated against for engaging in protected activity in violation of laws under the New Jersey Conscientious Employee Protection Act (CEPA), the New Jersey Constitution, and the New Jersey Civil Rights Act of 2004. The appellant highlights that four of the investigations are from 2018 and one is from 2022, and all the investigations are pending either at the departmental-level or at the OAL. He contends that the resolution of these matters has been stalled, which has allowed the Sheriff's Office to use these matters as a reason to remove him from the subject promotional eligible list.

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 for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. *N.J.A.C.* 4A:4-6.3(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 the decision to remove his name from an eligible list was in error.

In this matter, the record indicates that at the time the Sheriff's Office returned the subject certification, *i.e.* at the time it made its decision, the appellant had two recently sustained major disciplines. Therefore, the Commission finds that the Sheriff's Office had a valid reason to remove the appellant's name from the subject eligible promotional list for an unsatisfactory employment record. In this regard, it is recognized that a County Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. County Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567 (1990). The public expects County Correctional Police Officers to present a personal background that exhibits respect for the law and rules. This standard is even furthered heightened for a County Correctional Police Lieutenant, which is an upper-level supervisory position. Clearly, a candidate with two major disciplines in close proximity to the closing date of a promotional examination could be considered to have an unsatisfactory employment record for the purposes of *N.J.A.C.* 4A:4-6.1(a)7. However, if the appellant's pending disciplinary appeals are granted to the point where he receives no discipline, he may petition for reconsideration to have his name restored to the subject eligible at that time.¹

ORDER

¹ In this regard, a mere reduction of the penalties to, for example, minor disciplinary suspensions would be insufficient for restoration to the list given the close proximity of those infractions to the closing date of the examination.

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 15TH DAY OF MARCH, 2023



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