



STATE OF NEW JERSEY

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

In the Matter of Abel Iyamu, Cottage
Training Technician (PS5321K),
Hunterdon Developmental Center,
Department of Human Services

List Removal

CSC Docket No. 2023-197

ISSUED: August 23, 2023 (EG)

Abel Iyamu appeals the decision of the Department of Human Services to remove his name from the eligible list for Cottage Training Technician (PS5321K), Hunterdon Developmental Center, Department of Human Services based on an unsatisfactory employment record.

The subject eligible list (PS5386K) promulgated on March 10, 2022, and expires on March 9, 2025. The appellant's name appeared on the March 25, 2022, certification of the eligible list. He was in the 37th position on the certification. In disposing of the certification, the appointing authority requested that the appellant's name be removed on the basis of an unsatisfactory employment record. In support of its decision, the appointing authority provided the Division of Agency Services with a Preliminary Notice of Disciplinary Action (PNDA) dated May 24, 2021, indicating that a 10-day suspension was being sought.¹ Records also indicate that the appellant had received a one-day suspension in May 2020.

On appeal to the Civil Service Commission (Commission), the appellant provides explanations for his two disciplinary actions and asserts that he did nothing wrong. Specifically, for the one-day suspension, he claims that he took over the care for a client as the client was sleeping. Later when the client woke up, he removed

¹ It is noted that official records indicate that a settlement agreement was signed June 28, 2023, in which the appellant received a six-day suspension.

the client's helmet and noticed bruising that he could not have perceived earlier. With regard to the May 2021 incident, the appellant claims that he was not sleeping but had just using two hands to hold up his head. Further, the appellant indicates that he had been working for Hunterdon Developmental Center since 2013 and has been in the same position for over eight years. He asserts that it is demoralizing to have been working in the same position for over eight years and he doesn't believe he should be removed from the subject list.

The appointing authority, despite being provided the opportunity to respond, did not provide any arguments or evidence 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)7, allows the removal of 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), 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. Further, *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 Commission to remove 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.

In the instant matter, the appointing authority sought the removal of the appellant's name from the subject eligible list for an unsatisfactory employment record. It relied on a PNDA indicating a 10-day suspension and a one-day suspension in May 2020. Upon reviewing the record in the present matter, the Commission does not find that the appellant's employment history at the time of the certification warrants a removal. Though the appellant's one-day suspension was recent, it was only a minor disciplinary action, which is insufficient by itself to support removal from the list. Further, at the time of the certification, the appellant only had a PNDA issued against him, which is not a finalized disciplinary matter. Further, the subsequent settlement agreement was signed after the disposition of the certification.

Based on this record, the appointing authority has failed to show sufficient justification for removing the appellant's name from the eligible list. However, it is clear that the appointing authority, in its discretion under *N.J.A.C.* 4A:4-4.8, could have taken the appellant's background into account in deciding whether or not to bypass him on the eligible list. Further, the Commission notes that the appellant did not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Accordingly, while

the Commission finds insufficient reason to remove the appellant from the Cottage Training Technician (PS5321K), Hunterdon Developmental Center, Department of Human Services eligible list, and restores his name to the eligible list, it finds that his background provides sufficient cause to record him as bypassed on the March 25, 2022, certification.²

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the subject eligible list but that he be recorded as bypassed for appointment on the March 25, 2022, certification for Cottage Training Technician (PS5321K), Hunterdon Developmental Center, Department of Human Services.

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 23RD DAY OF AUGUST, 2023



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² Additionally, it is noted that based on the settlement agreement which imposed a six working day suspension, a major discipline, the appellant's employment history could be considered sufficient for removal from a future certification of the subject list.