



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of William R.
Hendrickson, Jr., Fire Prevention
Specialist (Special), Vernon
Township

List Removal Appeal

CSC Docket No. 2016-2890

ISSUED: **NOV 3 0 2016** (DASV)

William R. Hendrickson, Jr., appeals the attached decision of the Division of Agency Services (Agency Services) which found that Vernon Township had presented a sufficient basis to remove the appellant's name from the Fire Prevention Specialist (Special), Vernon Township, eligible list due to an unsatisfactory employment record.

By way of background, the appellant received a regular appointment as a Fire Prevention Specialist with Vernon Township on August 31, 2009. He was laid off from his position, effective October 14, 2011, and was placed on the special reemployment list for that title. On January 13, 2015, his name was certified from the special reemployment list. In disposing of the certification, the appointing authority requested the removal of the appellant's name for having an unsatisfactory employment record. Specifically, it indicated that the appellant was removed from his position as an Inspector, Fire Safety, with the Department of Community Affairs (DCA), effective September 4, 2014, due to disciplinary reasons.¹ In that regard, the appellant was charged with conduct unbecoming a public employee, discrimination that affects equal employment opportunity, including sexual harassment, other sufficient cause, and violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). The appellant was alleged to have called a female supervisor a c**t on December 1, 2013. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law for a hearing before an Administrative Law Judge (ALJ). The ALJ found that

¹ The appellant was appointed as an Inspector, Fire Safety, with DCA on August 27, 2012.

the appellant did in fact loudly call the female supervisor a c**t and he was guilty of the charges. However, because the appellant had no prior disciplinary history and he continued to work for nine months after the incident without any infractions, the ALJ determined that the appellant's removal was excessive. Therefore, the ALJ recommended to the Civil Service Commission (Commission) that the penalty be modified to a six-month suspension. However, since the Commission did not have a quorum of members to decide the case, it sought consent from the parties as required for additional time to render a decision. The appellant did not provide consent, and the ALJ's recommended decision was deemed adopted as the Commission's final decision. See *In the Matter of William Hendrickson* (CSC, deemed adopted March 21, 2016). Thereafter, on or about May 4, 2016, DCA pursued an appeal of the determination with the Superior Court of New Jersey, Appellate Division. That matter is currently pending.

The appellant filed an appeal of his removal from the January 13, 2015 certification of the special reemployment list to Agency Services, contending that his removal from DCA was under appeal and he expected to be successful in the matter. However, Agency Services determined that the appointing authority presented a sufficient basis to remove the appellant's name from the subject eligible list based on an unsatisfactory employment record.

On appeal to the Commission, the appellant initially notes that he had an exemplary employment record with Vernon Township prior to his layoff and is "technically a current employee of the township" since he serves as a member of the Highland Lakes Fire Department. He contends that the determination of Agency Services incorrectly states that he lacks proof that he was improperly terminated from DCA. Rather, he states that the ALJ's decision in that matter reinstated him to employment. Thus, the appellant maintains that the decision is proof that he should be restored to the Fire Prevention Specialist (Special), Vernon Township, eligible list. He asserts that two individuals were appointed by Vernon Township prior to his removal from the special reemployment list. The appellant requests that these new employees be displaced and he be appointed with back pay.

In response, Vernon Township, represented by Richard W. Wenner, Esq., indicates that it had requested the removal of the appellant's name because of his separation from DCA due to disciplinary reasons. DCA confirmed this information on January 29, 2015. Thus, as a result, Vernon Township states that it requested the appellant's removal from the special reemployment list by letter dated March 24, 2015, and supplied Agency Services with the information given by DCA to support its request.

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:4-6.3(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.

In the instant matter, the appointing authority removed the appellant from the Fire Prevention Specialist (Special), Vernon Township, eligible list due to the fact that, at the time of the disposition of the certification, he was considered removed from DCA effective September 4, 2014. Thus, the appointing authority presented a sufficient basis for its request for removal at the time. *See N.J.A.C.* 4A:4-6.1(a)5 (An eligible may be removed from an eligible list if the eligible has been removed from the public service for disciplinary reasons after an opportunity for a hearing). Subsequently, the ALJ modified the removal to a six-month suspension, and the decision was deemed adopted by the Commission on March 21, 2016. Regardless, a six-month suspension is sufficient to remove the appellant from the special reemployment list. A six-month suspension is the most severe penalty short of removal. Such a penalty serves as a warning to an employee that any future offenses could result in removal. Moreover, a Civil Service employee should follow rules and policies, exhibit good judgment, show deference to supervisory authority, and not utter profanities. In the appellant's case, he violated the State Policy by calling a female supervisor a c**t, which is a derogatory and demeaning term to refer to a woman and has absolutely no place in the workplace. *See e.g., In the Matter of Edward O'Neil* (MSB, decided December 7, 2005). Thus, such a serious offense resulting in major discipline that occurred just over one year prior to the appellant's certification for another Civil Service position shows lack of respect for such tenets. Therefore, the appellant's employment record adversely relates to the position sought and is sufficient cause to remove his name from the subject eligible list. Accordingly, the appellant has failed to meet his burden of proof in this matter.

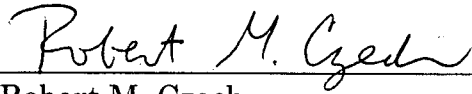
It is noted that should the Appellate Division find in Vernon Township's appeal that neither removal nor suspension of the appellant was warranted, the appellant may petition the Commission for reconsideration of its decision in this matter.

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 23RD DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: William R. Hendrickson, Jr.
Richard W. Wenner, Esq.
Harry J. Shortway
Kelly Glenn
Records Center



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

January 28, 2016

William Hendrickson

Jurisdiction: Vernon
Title: Fire Prevention Specialist
Symbol: Special
Certification No: OL150048
Certification Date: 01/13/15

Initial Determination: Removed – Unsatisfactory Employment Record

This is in response to your May 29, 2015 letter regarding the removal of your name from the above eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)7, which permits the removal of an eligible candidate's name from the eligible list for an unsatisfactory employment record.

In support of its decision, the Appointing Authority provided confirmation from the Department of Community Affairs that you were terminated from your position effective close of business September 4, 2014 for disciplinary reasons. These records provided information which the Appointing Authority used to justify your removal from the eligible list.

In your correspondence you state that your termination is currently under appeal and you expect to be successful. Furthermore, you state that your work history was exemplary and you should be reinstated to the Special Reemployment List. However, you provide no proofs or arguments that your termination was wrongful.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

In accordance with Merit System Rules, you may appeal to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

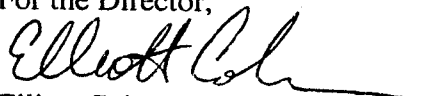
Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947,

C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,


Elliott Cohen
Human Resource Consultant
Local Placement Services

Victor Marotta
Vernon Township
21 Church St
Vernon, NJ 07462