

B-11



STATE OF NEW JERSEY

In the Matter of Elizabeth Coley-
Alford, Telephone Operator (Special
Reemployment List), Greystone Park
Psychiatric Hospital

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-375

List Removal Appeal

ISSUED: **DEC 22 2016** (SLK)

Elizabeth Coley-Alford appeals the attached determination of the Division of Agency Services upholding the removal of her name from the special reemployment list for Telephone Operator, Greystone Park Psychiatric Hospital on the basis of falsification of her application and an unsatisfactory background.

By way of background, the appellant was laid off, effective June 27, 2014, from her position as Telephone Operator. On March 23, 2015, the appellant's name was certified to the appointing authority from a special reemployment list for Telephone Operator. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of falsification of her application and an unsatisfactory background report. Specifically, on her application in response to the question, "Have you ever been convicted of a crime which has not been expunged by the court?" she selected "No." However, the appellant failed to disclose that she was found guilty of shoplifting on March 3, 1983 in Passaic Municipal Court.

On appeal, the appellant presents that she worked for the State for 13 years and had her fingerprints taken several times in this position. However, her 1983 shoplifting conviction had never come up on her background report. Therefore, she asserts that she reasonably believed that this misdemeanor shoplifting charge from 1983 was expunged from her record. She states that if she had known that the conviction was still on her record, she would have disclosed it. She indicates that once the appointing authority made her aware that this charge was still on her

record, she immediately provided it with the disposition papers. However, the appointing authority still removed her from the list. She believes that the appointing authority has a personal issue against her and discriminated against her. Therefore, she is requesting that she be immediately appointed to the subject title and receive back pay.

Although provided the opportunity, the appointing authority did not submit any additional information or argument for the Civil Service Commission (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)6*, allows the Commission to remove an individual from an eligible list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

N.J.A.C. 4A:4-4.7(a)11, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, provides that the name of an eligible may be removed from an eligible list person for other sufficient reason.

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.

The primary inquiry regarding the removal of a candidate's name based on the falsification of his or her employment application is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. *See In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003).

In this matter, with respect to the appellant's 1983 shoplifting charge, this minor incident occurred over 30 years ago. The appellant was convicted and ordered to pay a fine. She has not presented any evidence that she ever tried to go to court to have the charge expunged. As such, the Commission finds that it is unlikely that she thought that the conviction was expunged. More likely is that the appellant did not consider this minor incident germane as she had previously been hired by the State as a Telephone Operator despite this conviction and was employed by the State for over 13 years. As such, taking into consideration that the charge against the appellant was minor and the incident took place in 1983 when she was much younger, it would be inequitable to remove the appellant's name from the subject eligible list. *See In the Matter of Giuseppe Tubito* (CSC, decided April 9, 2014) (One time careless action of a nine year old that led to him being criminally

charged did not reflect adversely on his character 20 years later to make him an unsuitable candidate for employment). *See also, In the Matter of Julio Rivera* (MSB, decided February 11, 2004) (Eligible's name restored to list who neglected to disclose that he was suspended from school for two or three days when he was 12 years old). Similarly, this incident does not provide the appellant with an unsatisfactory background giver her subsequent, and long term, prior employment with the State. However, since the appellant neglected to disclose this information on her application as she was clearly required to do, it was correct for the appointing authority to seek to remove her name from the list. Therefore, based on these circumstances, while the Commission finds based on equitable considerations that the appellant's name should be restored to the special reemployment list, such restoration is for prospective purposes only.

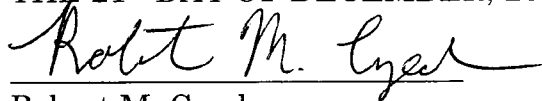
With respect to her request for back pay, in this case, appellant stated that she believes that the appointing authority has a personal issue against her and has accused the appointing authority of discriminating against her. *N.J.A.C. 4A:2-1.5(b)* provides that, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Civil Service Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation. However, other than her mere allegations, the appellant has not presented one scintilla of evidence that the appointing authority acted in bad faith or was motivated by invidious reason. Instead, the appointing authority was simply acting in accordance with *N.J.A.C. 4A:4-4.7(a)1* and *N.J.A.C. 4A:4-6.1(a)6*. Therefore, there is no basis on which to grant her back pay.

ORDER

Therefore, it is ordered that this appeal be granted in part, and the appellant's name be restored to the special reemployment list for Telephone Operator for prospective employment opportunities only.

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 21st DAY OF DECEMBER, 2016



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Attachment

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