B-154

STATE OF NEW JERSEY

In the Matter of Stacy White, Cottage Training Technician (Special), Hunterdon Developmental Center

CSC Docket No. 2016-3279

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

List Removal Appeal

ISSUED: OCT 27 2016 (SLD)

Stacy White appeals Hunterdon Developmental Center's request to remove her name from the special reemployment list for the title of Cottage Training Technician (Special), Hunterdon Developmental Center, due to her failure to complete preemployment processing.

Stacy White received a regular appointment to the title of Cottage Training Technician, effective April 9, 2011. On June 28, 2014, in lieu of a layoff, she was returned to her prior permanent title of Human Services Assistant. Ms. White was then laid off from the title of Human Services Assistant, effective October 9, 2015. As a result of the foregoing, she was placed on a special reemployment list for the title Cottage Training Technician. On July 27, 2015, Ms. White was certified from the subject eligible list to Hunterdon Developmental Center. In disposing of the subsequent certification, the appointing authority removed her name due to her failure to complete pre-employment processing as she had failed to take a drug test within 72 hours. Specifically, it asserted that Ms. White was called at 11:20 a.m., on September 15, 2015, and was given a conditional offer of employment and verbally told she had 72 hours to take a drug test. However, she did not take the drug test until 1:55 p.m. on September 18, 2015. In support, it submitted a September 15, 2015 Department of Human Services-Drug Testing Applicant Notice and Acknowledgement Form (Notice) which indicating in part:

> I Stacy White . . . understand that as part of the pre-employment process; the Department of Human Services will conduct a

> comprehensive background investigation to determine my suitability for the position for which I have applied.
> I understand that as part of this process, I will undergo drug testing through urinalysis.
> I understand that the cost of the drug testing is at my own expense.
> I understand that I must schedule myself and be tested for drugs, at a designated drug testing site, within 72 business hours of receiving a conditional offer of employment letter/notification.

It is noted that the notice was not signed by Ms. White on September 15, 2015. Rather, her signature was dated "September 17, 2015."

Subsequently, Ms. White appealed her removal to the Civil Service Commission (Commission). She asserted that she had explained to the appointing authority that she would not have money to pay for the drug test until "Friday"[1] as that is when her unemployment check would be received. Ms. White maintained that although she was told that she should not wait until the last day, Friday, she could still be tested on that day. Therefore, once she received her check, she went to be tested, arriving around 12:00 to 1:00 p.m. After she took the drug test, she called the appointing authority, at which time she was told that it was too "late" and she would be removed from the eligible list.

In response, the appointing authority argues that Ms. White should not be restored to subject eligible list, as she had not taken the drug test within the required 72 hours pursuant to its Administrative Order 4:23 concerning Drug Testing (Testing Policy). Specifically, the Testing Policy provides, in pertinent part, that:

> Applicants will receive and sign the "Applicant Notice and Acknowledgment" form . . . and must be tested for drugs at a designated drug testing site, within 72 hours of receiving a conditional offer of employment.

The appointing authority submits an April 15, 2016 internal memorandum indicating that Ms. White was given a conditional offer of employment on "December 15, 2015 at 11:20 a.m.," and informed that she had to get a drug test within 72 hours, or she would not be able to be hired.

The appointing authority also maintains that Ms. White purposely dated the Notice for September 17, 2015, in an attempt to "secret" the fact that she completed the test after the 72-hour time period. In this regard, it asserts that Ms. White actually completed the drug test on September 18, 2015, at 1:55 p.m., which was confirmed by the testing facility.

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[1] It is noted that September 18, 2015 was a Friday.

CONCLUSION

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 the appellant's name from an eligible list was in error.

In the instant matter, Ms. White asserts that she informed the appointing authority that she was unable to pay for the drug test until she received her unemployment check on Friday. However, the appointing authority maintains that although Ms. White could have taken the drug test on Friday, she had to do so before 11:20 a.m. to be within the required 72-hour time period. However, she did not take the test until 1:55 p.m., therefore, it maintains that she was properly removed. Moreover, the appointing authority asserts that the appellant attempted to hide the fact that she did not take the test until after the 72-hour period, by dating her Notice September 17, 2015.

Initially, the Commission does not find the appointing authority's argument that the appellant attempted to hide the fact that she took the test after 11:20 a.m. on September 18, 2015 persuasive. In this regard, Ms. White maintains that she took the test on "Friday," which was September 18, 2015, after she received her unemployment check. She then claims that after she took the test, she contacted the appointing authority to tell them and was then told that she had taken the test too late and was going to be removed from the list. The mere fact that she inadvertently used the wrong date when she signed the Notice, does not establish that she intended to deceive the appointing authority.

With regard to the appointing authority's assertion that Ms. White failed to take the test within the required 72-hour time period, it is noted that the Notice indicates that the test was to be completed within "72 business hours." However, the appointing authority maintains that its policy provides that the test is to be taken within 72 hours. Although it is clear that Ms. White took the test after the 72-hour time period espoused by the appointing authority (*i.e.*, prior to 11:20 a.m. on September 18, 2015), she did take it (at 1:55 p.m. on September 18, 2015) within "72 business hours" as provided on the Notice. Therefore, as the Policy and the Notice provide for two different time periods, Ms. White's taking the test at 1:55 p.m. on Friday, September 18, 2015, cannot be found to be untimely. Moreover, the Commission is sympathetic to Ms. White's circumstances of having been laid off from her employment with the State, placed on unemployment, and unable to pay for the drug test until receipt of her employment monies. Therefore, good cause exists to grant Ms. White's request to restore her name to the special reemployment list for Cottage Training Technician (Special), Hunterdon Developmental Center, for future prospective employment opportunities only.

ORDER

Therefore, it is ordered that this appeal be granted and Stacy White's name be restored to the Cottage Training Technician (Special), Hunterdon Developmental Center eligible list, for future 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 19TH DAY OF OCTOBER, 2016

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