



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matters of Virgen Aldoy and
Frederick Doll III, Supervisor Food
Service Area Operations (PS1328K),
Ancora Psychiatric Hospital,
Department of Human Services

List Removal Appeals

CSC Docket Nos. 2017-2919 and
2017-2920

ISSUED: NOV 02 2017 (HS)

Virgen Aldoy and Frederick Doll III, represented by Jenna A. Curley, Senior Staff Representative, CWA Local 1040, appeal the removal of their names from the eligible list for Supervisor Food Service Area Operations (PS1328K), Ancora Psychiatric Hospital, Department of Human Services on the basis of unsatisfactory employment records. These appeals have been consolidated due to common issues presented.

The appellants, non-veterans, took and passed the promotional examination for Supervisor Food Service Area Operations (PS1328K), which had a closing date of June 21, 2016. The resulting eligible list promulgated on November 3, 2016 and expires on November 2, 2019. The appellants' names were certified to the appointing authority on January 24, 2017. In disposing of the certification, the appointing authority requested the removal of the appellants' names on the basis of unsatisfactory employment records. Specifically, the appointing authority asserted that Aldoy entered into a settlement agreement with the appointing authority on January 31, 2017, wherein she agreed to a penalty of a 30 working day suspension, on charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause. Aldoy's disciplinary action stemmed from an incident in which she was in charge of the tray line and was ultimately responsible for tray accuracy; subsequently, it was reported that several patients received foods and/or drinks that were not permitted in their diets due to medical reasons and/or personal dislikes. The appointing authority also asserted that Doll entered into a settlement agreement with the appointing authority on January 12, 2017, wherein he agreed to a penalty of a 20 working day suspension, on charges of conduct unbecoming a

public employee and other sufficient cause. Doll's disciplinary action stemmed from an incident in which he was asleep at his desk while not on break or lunch time. Both appellants were serving provisionally in the subject title at the time of the respective incidents and were subsequently returned to their permanent title of Senior Food Service Handler, effective March 4, 2017.

On appeal to the Civil Service Commission (Commission), the appellants state that they have worked for the appointing authority for many years and have received no other major disciplines. The appellants contend that the appointing authority's actions in returning them to their permanent title and requesting the removal of their names from the subject eligible list are "excessive and punitive."

In response, the appointing authority states that upon review of the above-referenced settlement agreements, it made the determination that the appellants should return to their permanent title. It maintains that the disciplinary actions constituted adverse prior employment history that justified the removal of the appellants' names from the subject eligible list. The appointing authority also notes that both appellants were serving provisionally in the subject title at the time of the incidents. In support, it submits copies of the above-referenced settlement agreements and related documents.

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:4-4.7(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. *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.

In these matters, the position sought, Supervisor Food Service Area Operations, is classified as a first-level supervisory title and is reserved for employees who exhibit leadership skills, a positive work ethic, and respect for rules and regulations. Further, the Commission has previously removed eligibles from promotional lists where their employment history revealed as little as one major discipline.¹ See *In the Matter of John Bonafide*, Docket No. A-1658-04T1 (App. Div. February 7, 2006) (Removal from Sheriff's Officer Lieutenant promotional list

¹ Major discipline includes removal, disciplinary demotion and suspension or fine for more than five working days at any one time. See *N.J.A.C.* 4A:2-2.2(a).

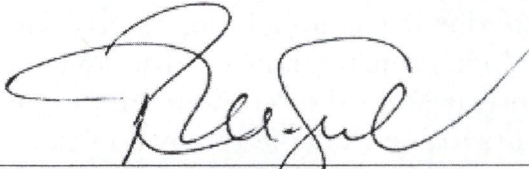
upheld for Sheriff's Officer Sergeant who received a six-month suspension for misuse of public property three months prior to the certification of his name for appointment); *In the Matter of Frank R. Jackson, Correction Lieutenant, Department of Corrections (PS6320I)*, Docket No. A-1617-00T2 (App. Div. March 28, 2002) (Removal from Correction Lieutenant promotional list upheld for Correction Sergeant whose disciplinary record included two official reprimands for absenteeism and a 30-day suspension for falsification of a report, despite the recommendation of his immediate supervisor). Although the appellants argue that the removal of their names from the list is unwarranted, the Commission disagrees. In this regard, Aldoy, while serving provisionally in the subject first-level supervisory title, was disciplined for conduct unbecoming a public employee, neglect of duty and other sufficient cause for failing to ensure that patients received food and drink in accordance with their diets and received a 30 working day suspension in January 2017. Doll, also while serving provisionally in the subject first-level supervisory title, was disciplined for conduct unbecoming a public employee and other sufficient cause for sleeping on duty and received a 20 working day suspension in January 2017. Such conduct is unacceptable for those seeking first-level supervisory positions. Based on the foregoing, the Commission finds that the appellants' prior disciplinary histories adversely relate to the position sought and are sufficient cause to remove their names from the eligible list. Accordingly, the appointing authority has shown sufficient justification for removing their names from the subject eligible list. While the appellants also contend that they should not have been returned to their permanent title, it must be noted that a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position that she or he is occupying. See *O'Malley v. Department of Energy*, 109 N.J. 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit). Furthermore, the Commission does not have jurisdiction to review the termination of a provisional appointment. See N.J.S.A. 11A:2-6 and N.J.A.C. 4A:2-2.1. As such, the appellants have not met their burden of proof in these matters.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF NOVEMBER, 2017



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