



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Steven Ruzek,
Sheriff's Officer (S9999R), Union
County Sheriff

List Removal Appeal

CSC Docket No. 2017-1473

ISSUED: **MAY 19 2017** (HS)

Steven Ruzek, represented by Jeffrey J. Berezny, Esq., appeals the removal of his name from the eligible list for Sheriff's Officer (S9999R), Union County Sheriff on the basis of a positive drug test.

The appellant, a non-veteran, took and passed the open competitive examination for Sheriff's Officer (S9999R), which had a closing date of September 4, 2013. The resulting eligible list promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified to the appointing authority on February 25, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of a positive drug test and the listing of his name in the Central Drug Registry (Registry) maintained by the Division of State Police (State Police). In support, it submitted a letter dated June 7, 2016 from the State Police that indicated that the appellant had a positive drug test on August 5, 2014 with the New Jersey Department of Corrections (DOC) and had his name entered into the Registry on June 7, 2016.¹ The appointing authority returned the certification on October 7, 2016, and the certification was recorded by this agency on October 18, 2016.

On appeal to the Civil Service Commission (Commission), the appellant states that he interviewed with the appointing authority on or about May 23, 2016

¹ The appellant's name was also removed from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections. The Civil Service Commission denied the appellant's appeal of that action. See *In the Matter of Steven Ruzek* (CSC, decided April 15, 2015).

and was advised that his application process would be moving forward. Nevertheless, he later received notice of the removal of his name from the eligible list. The appellant explains that he learned from DOC that his name was not added to the Registry until 2016 through no fault of his own. Apparently, his name was belatedly reported to the Registry by DOC and there was a mix-up regarding his two-year preclusion term expiring on August 5, 2016. His name was mistakenly not added to the Registry in a timely fashion in 2014 when it should have been. On November 4, 2016, the appellant, through counsel, served on the State Police and DOC a request to remove his name from the Registry. In that request, the appellant asserted, among other things, that the mistake had resulted in the two-year preclusion term to incorrectly commence in 2016 instead of 2014. On November 14, 2016, the State Police advised his counsel that he was in fact eligible to be employed by any law enforcement agency in the State because the two-year Registry preclusion period had expired. Counsel was also advised that DOC had contacted the State Police and asked if the appellant's name was ever placed on the Registry, that the State Police then advised DOC that it had not, and that the State Police thereafter placed his name on the Registry.

The appellant maintains that according to the Attorney General's Law Enforcement Drug Testing Policy, the two-year preclusion term from law enforcement positions due to a failed drug test commences from the date of the drug test and not from the date that the candidate's name was placed on the Registry. As such, he should have been deemed eligible for all law enforcement positions effective August 5, 2016. The appellant emphasizes that an applicant who tests positive on a drug test is not barred from law enforcement positions but only precluded from consideration for two years. He adds that he is educated, gainfully employed, bilingual, and has exceptional character and fitness. The appellant requests that he be reinstated to the eligible list and appointed with retroactive seniority, back pay and benefits, that any appointments from the eligible list be made contingent upon the disposition of this appeal, and that he be awarded counsel fees.

The appointing authority, despite being provided the opportunity, did not provide any response.

CONCLUSION

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 name from an eligible list was in error.

Section III(A) of the Attorney General's Law Enforcement Drug Testing Policy, states, in pertinent part:

Agencies that choose to test applicants for law enforcement positions must notify those applicants that the pre-employment process will include drug testing. The notification will also indicate that a negative result is a condition of employment and that a positive result will: a) result in the applicant being dropped from consideration for employment; b) cause the applicant's name to be reported to the central drug registry maintained by the Division of the State Police; and c) preclude the applicant from being considered for future law enforcement employment for a period of two years from the date of the drug test.

The record in this matter indicates that the appellant had a positive drug test on August 5, 2014. The required two-year waiting period on the absolute bar on law enforcement employment as indicated in the Attorney General's Law Enforcement Drug Testing Policy expired on August 5, 2016, after the certification date but before the certification was returned and recorded. Nevertheless, it is also apparent that the appointing authority was under advice from the State Police that the appellant's name had been entered into the Registry on June 7, 2016 as evidenced by the State Police's letter. Accordingly, the appropriate remedy based on the particular circumstances presented is to restore the appellant to the subject eligible list. However, the appointing authority, in its discretion under *N.J.A.C. 4A:4-4.8*, could take the prior positive drug test into account to bypass him on the subject eligible list. In the present case, this presents a sufficient basis to bypass his name on the eligible list. See *N.J.A.C. 4A:4-4.8(a)3*. Accordingly, the appellant's name should be reflected on the February 25, 2016 certification as bypassed.

It is further noted that the appellant did not possess a vested property interest in the position. 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). Therefore, the appellant is not entitled to a retroactive appointment, back pay or counsel fees. In this regard, *N.J.A.C. 4A:2-1.5(b)* provides that, in all appeals other than disciplinary and good faith layoff appeals, back pay and counsel fees may be granted as a remedy where an appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. *N.J.A.C. 4A:2-1.5(b)* further provides that a finding of sufficient cause may be made based on an appointing authority's bad faith or invidious motivation. See also *In the Matter of*

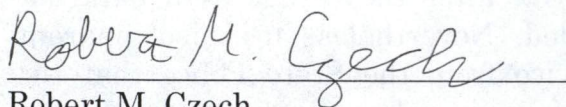
Anthony Hearn, 417 N.J. Super. 289 (App. Div. 2010) (In the absence of a rule to define "sufficient cause" for purposes of the application of N.J.A.C. 4A:2-1.5(b), the court evaluated the various merits of Hearn's case and concluded that sufficient cause had been established). As there is no indication that the appointing authority acted in bad faith or with invidious motivation, sufficient cause to award back pay or counsel fees is not present in this matter.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the eligible list for Sheriff's Officer (S9999R), Union County Sheriff but that his name be reflected as bypassed on the February 25, 2016 certification.

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 17TH DAY OF MAY, 2017



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