



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

Request for Reconsideration

CSC Docket No. 2018-8

ISSUED: MARCH 29, 2018 (HS)

Steven Ruzek, represented by Daniel J. Zirrith, Esq., requests reconsideration of the attached final decision rendered on May 17, 2017, which restored the petitioner's name to the Sheriff's Officer (S9999R), Union County Sheriff eligible list but ordered that his name be reflected as bypassed on the February 25, 2016 certification. A copy of that decision is attached hereto and incorporated herein.

By way of background, the appointing authority requested the removal of the petitioner's name from the subject eligible list 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 petitioner 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.<sup>1</sup> The appointing authority returned the certification on October 7, 2016, and the certification was recorded by this agency on October 18, 2016. The petitioner appealed to the Civil Service Commission (Commission). The Commission noted that 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 was also apparent that the appointing

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

authority was under advice from the State Police that the petitioner's name had been entered into the Registry on June 7, 2016 as evidenced by the State Police's letter. Accordingly, the Commission found that the appropriate remedy based on the particular circumstances presented was to restore the petitioner to the subject eligible list. However, it further found that 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 presented a sufficient basis to bypass his name on the eligible list. *See N.J.A.C. 4A:4-4.8(a)3*. Accordingly, the Commission determined that the petitioner's name should be reflected on the February 25, 2016 certification as bypassed. The Commission accordingly restored the petitioner's name to the subject eligible list but ordered that his name should be reflected as bypassed on the certification.

In his request for reconsideration, the petitioner contends that a clear material error occurred because the Commission erroneously held that his name should be reflected as bypassed even though his name was removed due to no fault of his own; the appointing authority knew or should have known that the two-year waiting period on the absolute bar on law enforcement employment expired on August 5, 2016; and he cannot logically be deemed bypassed because he was never actually considered. He argues that the Commission's decision contains a material factual error in that it indicated that the appointing authority requested the removal of the petitioner's name from the subject eligible list on the basis of a positive drug test and the listing of his name in the Registry. In this regard, the petitioner maintains that the appointing authority's only reason to support its request was the listing of his name in the Registry. He asserts that the appointing authority failed to recognize that it was permitted to consider and appoint him. The petitioner argues that the appointing authority made no independent judgment to remove his name but relied only on its mistaken belief that the appearance of his name on the Registry prohibited its consideration of him. As such, he maintains that the Commission's determination that he should be considered bypassed is illogical and unsupported by any evidence. The petitioner also contends that the Commission's denial of retroactive appointment, back pay and counsel fees was a material error. He submits that such relief should be ordered, or alternatively, his name should be placed at the top of the next list. The petitioner asserts that he should not be punished for the clear mistakes of DOC and the appointing authority. He submits that he is a hardworking and educated individual with an exemplary background and would be an asset to any law enforcement agency.

In response, the appointing authority, represented by Kathryn V. Hatfield, Esq., argues that the petitioner has not submitted any evidence to show that the Commission's remedy was inappropriate or in error. It submits that the Commission has the discretion to fashion appropriate remedies. The appointing authority contends that while the petitioner acknowledges the Commission's authority in this regard, he challenges the chosen remedy because he does not like

it. It maintains that the Commission was well within its right to determine the appropriate remedy and did so in this case. It states that the prior decision should not be upended.

In reply, the petitioner maintains that the Commission did not provide him with the appropriate remedy. He notes that he instituted his appeal during the life of the eligible list and argues that the Commission should have revived the list pursuant to either *N.J.A.C.* 4A:4-3.4(a)3, since the appointing authority committed an administrative error in the application of the date of the absolute bar on law enforcement employment, or *N.J.A.C.* 4A:4-3.4(a)5, based on good cause. The petitioner also notes that the Commission has previously ordered the revival of an eligible list to permit the appointment of a candidate at the time of the next certification. In support, the petitioner cites the Commission's decisions in *In the Matter of Joseph Nelson* (CSC, decided October 2, 2013); *In the Matter of Matthew McCue and Dana Reid* (CSC, decided April 9, 2014); and *In the Matter of Salimah Scott Cobbert* (CSC, decided February 8, 2017).

### CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding, which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

Initially, the Commission does not agree that it was a material factual error to indicate that the appointing authority requested the removal of the petitioner's name from the subject eligible list on the basis of a positive drug test and the listing of his name in the Registry. In this regard, the only reason for the listing of the petitioner's name in the Registry in the first place *was* a positive drug test. Next, the petitioner claims that the Commission's determination that his name should be reflected as bypassed was erroneous because he was never actually considered and because it was unsupported by any evidence. These claims are not persuasive. Acting under advice from the State Police that the petitioner's name had been entered into the Registry on June 7, 2016, the appointing authority requested that his name be removed from the eligible list. As such, it is clear that the appointing authority reviewed and considered the petitioner's candidacy for the position at issue. The Commission's later determination, upon its review of the record developed before it, that the petitioner's name should be reflected as bypassed was supported by sufficient evidence. In this regard, it is undisputed that the petitioner had a positive drug test. Given the high standards placed on law enforcement personnel, such matter presented sufficient cause to bypass the petitioner's name. Further, the petitioner asserts that the Commission did not provide the appropriate remedy in the prior decision and that it should have ordered the revival of the

eligible list to permit his appointment at the time of the next certification. However, none of the cases cited by the petitioner support the ordering of his preferred remedy. It is acknowledged that in *Nelson, supra*, the Commission found that the record did not support the removal of Nelson's name from the eligible list and ordered that the eligible list be revived in order for Nelson to be considered for appointment at the time of the next certification.<sup>2</sup> However, unlike the instant matter, the Commission made no finding that Nelson could be bypassed. As already noted, the Commission specifically found in the instant matter that the petitioner's positive drug test amply supported his bypass. As such, *Nelson* is distinguishable. *McCue and Reid, supra*, and *Cobbertt, supra*, are inapposite as they are not list removal cases.

However, agency records indicate that, following the February 25, 2016 certification, a certification for Sheriff's Officer was issued to the appointing authority on October 18, 2016. Given this subsequent certification and the Commission's restoration of the appellant's name to the subject eligible list in the prior decision, there is a basis to revive the list and allow the appellant's name to be certified at the time of the next certification. However, the Commission reiterates that the petitioner is not entitled to retroactive appointment, back pay and counsel fees for the reasons stated in the prior decision.

### ORDER

Therefore, it is ordered that the eligible list for Sheriff's Officer (S9999R), Union County Sheriff be revived and the appellant's name be certified at the time of the next certification, 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 27<sup>TH</sup> DAY OF MARCH, 2018



Deirdre L. Webster Cobb  
Acting Chairperson  
Civil Service Commission

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<sup>2</sup> It is noted that on reconsideration, the Commission vacated this order and ordered that Nelson's name be recorded as removed on the eligible list. See *In the Matter of Joseph Nelson* (CSC, decided April 23, 2014).

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Attachment

- c. Steven Ruzek  
Daniel J. Zirrith, Esq.  
Joseph P. Cryan  
Kathryn V. Hatfield, Esq.  
Kelly Glenn



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. 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

<sup>1</sup> 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*



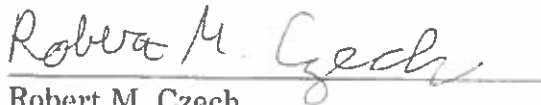
*Anthony Hearn*, 417 N.J. Super. 289 (App. Div. 2010) (In the absence of a rule to define "sufficient cause" for purposes of the application of N.J.A.C. 4A:2-1.5(b), the court evaluated the various merits of Hearn's case and concluded that sufficient cause had been established). As there is no indication 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 17<sup>TH</sup> DAY OF MAY, 2017



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