

CSC
B-14



STATE OF NEW JERSEY

In the Matter of Tamika Veal-
Johnson, Police Officer, Trenton

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-552

Administrative Appeal

ISSUED: **AUG 21 2015** (EG)

The City of Trenton requests that Tamika Veal-Johnson's name be restored to the Police Officer, Trenton special reemployment list.

As background, Veal-Johnson was hired by the appointing authority as a Police Officer on January 9, 2006. The appellant was laid off from this position effective September 16, 2011 and her name was placed on the special reemployment list for Police Officer in Trenton. Subsequently, in 2013 the appointing authority removed Veal-Johnson from the subject special reemployment list due to an unsatisfactory background. Specifically, Veal-Johnson was under investigation by the Mercer County Prosecutor's Office for fraud. Veal-Johnson appealed her removal from the list to the Civil Service Commission (Commission). The Commission denied her appeal, indicating that there was sufficient cause to support the appointing authority's decision. *See In the Matter of Tamika Veal-Johnson, Police Officer, City of Trenton* (CSC, decided April 9, 2014).

In the instant matter, the appointing authority asserts that in August 2014, Veal-Johnson was advised by the Mercer County Prosecutor's Office that its investigation revealed no criminal intent on her part and the case against her was dropped. The appointing authority argues that good cause exists to relax the 45-day time limit outlined in *N.J.A.C. 4A:2-1.6(a)* for reconsideration. Additionally, it requests that Tamika Veal-Johnson's name be restored to the Police Officer, Trenton special reemployment list. It is noted that the Division of Agency Services supports this request.

CONCLUSION

N.J.A.C. 4A:2-1.6(a) states that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. In addition, *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. Further, *N.J.A.C.* 4A:1-1.2(c) states in pertinent part that the Commission may relax rules for good cause in a particular situation.

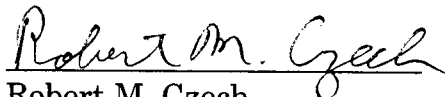
In the present matter, Veal-Johnson's name was properly removed from the Police Officer, Trenton special reemployment list due to the investigation by the Mercer County Prosecutor's Office for fraud. However, the Mercer County Prosecutor's Office subsequently found that there was no criminal intent on her part and the case against her was dropped. Additionally, the appointing authority has indicated its desire to return her to the subject special reemployment list. Accordingly, the appointing authority has shown good cause based on the circumstances described above to relax the applicable rules and restore the appellant's name to the Police Officer, Trenton special reemployment list for prospective employment opportunities only. The Commission notes that the decision in this matter is based on unique circumstances and shall not serve as a precedent for other matters.

ORDER

Therefore, it is ordered that Tamika Veal-Johnson be restored to the Police Officer, Trenton special reemployment list 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 19TH DAY OF AUGUST, 2015



Robert M. Czech

Chairperson

Civil Service Commission

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Attachment

c: Tamika Veal-Johnson
Steven R. Ponella
Kenneth Connolly
Joseph Gambino

CSC
B-51



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Tamika Veal-Johnson,
Police Officer, City of Trenton

CSC Docket No. 2013-1475

List Removal Appeal

ISSUED: ~~APR~~ 10 2014 (EG)

Tamika Veal-Johnson, represented by Jack A. Butler, Esq., appeals the decision of the City of Trenton to remove her name from the Police Officer, City of Trenton special reemployment eligible list due to an unsatisfactory criminal record.

As background, the appellant was laid off from her Police Officer position effective September 16, 2011. The appellant's name was placed on the special reemployment list for Police Officer. On or about May 2012, the appointing authority began contacting eligibles on the subject special reemployment list and began the rehiring process. On August 1, 2012, the appointing authority certified the special reemployment list and proceeded to appoint several eligibles listed below the appellant on the list. Upon disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, it indicated that the appellant was under investigation for fraud by the Mercer County Prosecutor's Office.

On appeal, the appellant argues that she was inappropriately bypassed for appointment. Additionally, she contends that the appointing authority violated the Americans with Disabilities Act as she underwent medical and psychological testing and as such should have received a permanent appointment. It is noted that that the appellant's arguments for a bypass were submitted on appeal before she received notice that she had been removed from the eligible list. The appellant did not provide any arguments regarding her removal from the special reemployment list.

Although provided the opportunity, the appointing authority did not provide any further arguments or evidence for the Civil Service Commission (Commission) to review in this matter.

CONCLUSION

N.J.A.C. 4A:8-2.3(c)3 provides that the removal of names from a special reemployment list may be made in accordance with applicable rules.

N.J.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-4.7(a)11 allows the Civil Service Commission to remove an eligible's name from an eligible list for other valid reasons. Additionally, *N.J.A.C.* 4A:4-6.1(a)9 provides that a person may be denied examination eligibility or appointment 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 the instant matter, the appointing authority requested the appellant's removal from the special reemployment list due to an ongoing investigation for fraud. The appellant has not provided any arguments or evidence in response. Initially, the Commission notes that such an investigation cannot be considered a criminal record. Thus, *N.J.A.C.* 4A:4-4.7(a)4 cannot be applied. Nevertheless, such a fact is of significant concern and may lead to removal from a list pursuant to *N.J.A.C.* 4A:4-4.7(a)11 and *N.J.A.C.* 4A:4-6.1(a)9. In reviewing this matter, the Commission notes that that pursuant to *N.J.A.C.* 4A:8-2.3, the only options available to the appointing authority when dealing with a reachable eligible on a special reemployment list is to either appoint the eligible or remove the eligible. In this regard, the Commission notes that the investigation by the Prosecutor's Office for fraud is serious matter. The Commission is ever mindful of the high standards

that are placed upon law enforcement candidates and personnel. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of public employee:

His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public . . . See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also *In re Phillips*, 117 N.J. 567 (1990).

Accordingly, the Commission finds that sufficient cause has been presented to remove the appellant from the list pursuant to N.J.A.C. 4A:4-4.7(a)11 and N.J.A.C. 4A:4-6.1(a)9.

Further, the appellant has argued that that the appointing authority subjected her to medical and psychological examinations. Pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C.A. sec. 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. See also, the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be "real," the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate's possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information.

In this case, the appointing authority did not strictly conform with the requirements of the ADA. By choosing to conduct the appellant's background check after scheduling and completing the appellant's psychological and medical examination, the appointing authority did not have the opportunity to fully review the appellant's background before conducting the psychological and medical examination. Consequently, the appointing authority did not comply with the requirement of rendering a conditional offer of employment, based upon a complete review of the candidate's background, prior to administering the medical and psychological examination. While the appointing authority would be well served to revise its candidate evaluation procedures to avoid having this issue raised in

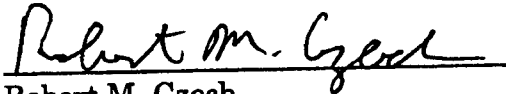
future cases, based upon the totality of the circumstances presented in this matter, it appears that the appellant's unsatisfactory background constitutes sufficient cause to remove her name from the special reemployment eligible list for Police Officer, City of Trenton. *See In the Matter of Curtis L. Dorch* (MSB, decided September 25, 2002).

ORDER

Therefore, it is ordered that this appeal be denied.

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 9TH DAY OF APRIL, 2014



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