

B-8



STATE OF NEW JERSEY

In the Matter of Cindy Liebman,	:	FINAL ADMINISTRATIVE ACTION
Program Specialist 4, Social/Human	:	OF THE
Services (PS2928K) and Program	:	CIVIL SERVICE COMMISSION
Specialist 4 (PS2860K), Division of	:	
Family Development	:	
	:	
CSC Docket Nos. 2016-3446 and	:	List Removal Appeals
2016-3448	:	
	:	
	:	

ISSUED: MAR 17 2017 (CSM)

Cindy Liebman appeals the removal of her name on the Program Specialist 4, Social/Human Services (PS2928K) and Program Specialist 4 (PS2860K), Division of Family Services eligible lists, based on an adverse employment record. These appeals have been consolidated due to common issues presented.

The appellant, a non-veteran, took the subject promotional examinations, achieved passing scores, and was ranked #1 on the resultant eligible lists. The appellant's name was certified to the appointing authority on October 2, 2015 (PS151508) for Program Specialist 4, Social/Human Services and certified on October 5, 2015 (PS151513) for Program Specialist 4. In disposing of the certifications, the appointing authority requested the removal of the appellant's name from the list contending that she had an adverse employment record. Specifically, the appointing authority asserted that over the past eight years, the appellant received four Final Notices of Disciplinary Actions (FNDA) suspending her for a total of 35 working days.

On appeal to the Civil Service Commission (Commission), the appellant explains the incident resulting in her 2016 suspension and raises a number of concerns regarding the Hearing Officer's report. Further, she asserts that she was discriminated against because other employees involved in the incident were not disciplined or even criticized. The appellant maintains that her name was not removed from the lists due to an unsatisfactory employment record since the appointing authority did not request the removal of her name from other promotional lists she was on between 2014 and 2015. Additionally, the appellant

contends that the removal of her name from the subject lists may be related to her 2015 EEO complaints about discrimination, disparate treatment, hostile environment, offensive work environment and retaliation. In this regard, she states that she is the only Jewish employee supervised in her unit and that she is married to an African-American man. Thus, she believes that she has been and continues to be subjected to discrimination based upon her religion and the race of her husband. In support of her appeals, the appellant provides copies of the November 20, 2015 Hearing Officer's Report and Recommendation regarding her disciplinary action, her performance evaluations, and various phone and e-mail records.

In response, the appointing authority states that over the past eight years, the appellant has been served with four disciplinary charges resulting in her suspension from work totaling 35 days. In support, it provides copies of FNDAs dated January 31, 2008, February 12, 2014, June 25, 2014, and March 30, 2016, upholding charges for a violation of the code of ethics and representing, appearing for or negotiating on behalf of a party other than the State in any cause, proceeding, application or other matter pending before the State, insubordination, incompetency or inefficiency, neglect of duty, and conduct unbecoming a public employee.

In reply, the appellant states that the appointing authority did not comply with *N.J.A.C.* 4A:4-4.7(a)11 as she received the disposition notice on March 3, 2016, but as of April 15, 2016, no submission had been made. Further, she argues that the appointing authority provided inaccurate facts in its submission, as she was suspended for a total of 32 days, not 35 days. Additionally, she contends that it is improper to consider her employment record as unsatisfactory as her job performance has always been rated as satisfactory. Given that disciplinary hearing officers and the Department of Human Services' EEO officer are paid by the appointing authority, the appellant claims they do not objectively investigate matters or make recommendations. Therefore, the appellant requests that her name be restored to the subject lists.

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 the Commission to remove 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.

In disposing of the certifications, the appointing authority attached the appellant's complete disciplinary history which included FNDA's dated January 31, 2008, February 12, 2014, June 25, 2014, and March 30, 2016, upholding charges for a violation of the code of ethics and representing, appearing for or negotiating on behalf of a party other than the State in any cause, proceeding, application or other matter pending before the State, insubordination, incompetency or inefficiency, neglect of duty, and conduct unbecoming a public employee. Although the appellant argues that her name appeared on lists between 2014 and 2015 and the appointing authority never took any action to remove her name from these lists, that is irrelevant, as her last disciplinary action, which resulted in her being suspended for 15 days, was imposed in January 2016, during the lives of the subject lists. Further, while the appellant argues that there were numerous inaccuracies in the Hearing Officer's Report and Recommendation for this disciplinary matter, she had the opportunity to appeal that action, as well as the other disciplinary matters, to the Governor's Office of Employee Relations in accordance with the collective negotiations agreement between the State and the Communications Workers of America. Any factual discrepancies or claims that she was not being treated similarly to other employees involved in those incidents should have been adjudicated in those proceedings or with the appointing authority's Equal Employment Opportunity Office for asserted violations of the State Policy Prohibiting Discrimination in the Workplace. However, the appellant has not provided one scintilla of evidence that she adjudicated these matters in those forums where it was determined that she was improperly disciplined or that she had been discriminated against in violation of the State Policy.¹

In the instant matter, the positions sought, Program Specialist 4, Social/Human Services and Program Specialist 4 are, the highest titles in the Program Specialist title series, classified as second-level supervisory titles, and are reserved for employees who exhibit leadership skills, a positive work ethic, and respect for the rules and policies of the Division of Family Development. Further, the Commission has previously removed eligibles from promotional lists where their employment history revealed extensive minor discipline or as little as one major discipline. *See In the Matter of Louis Bernstein, Correction Lieutenant (PS6320I), Department of Corrections* (MSB, decided July 17, 2002) (Removal upheld from a Correction Lieutenant eligible list for 20 minor disciplinary infractions in a 10-year period.); *In the Matter of John Bonafide*, Docket No. A-1658-04T1 (App. Div. February 7, 2006) (Removal from Sheriff's Officer Lieutenant promotional list 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); and *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

¹ It is noted that in December 2016 the Commission denied the appellant's appeal that she had been subjected to violation of the State Policy regarding promotional appointments for other titles.

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).

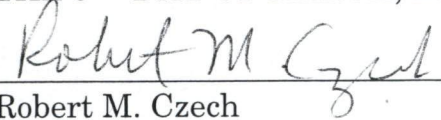
Although the appellant essentially argues that her discipline does not warrant the removal of her name from the lists, the Commission disagrees. In these matters, the appellant, a Program Support Specialist 1, Assistance Program, which is a first-level supervisory title, was disciplined for insubordination and conduct unbecoming a public employee in 2016 for failing to attend a meeting after being given written instructions to attend the meeting by her supervisor and received a 15 working day suspension. She also received a 10 working day suspension in 2014 for intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority, disrespect or use of insulting or abusive language to a supervisor and a five working day suspension in 2014 for insubordination, incompetency or inefficiency, neglect of duty, and conduct unbecoming a public employee. Further, she received a three working day suspension in 2008 for an ethics violation. This type of conduct is unacceptable for those seeking higher level supervisory positions. Based on the foregoing, and the entirety of the record, the Commission finds that the appellant's prior disciplinary history adversely relates to the positions sought and is sufficient cause to remove her name from the eligible lists. Accordingly, the appellant has not met her burden of proof in these matters and the appointing authority has shown sufficient justification for removing her name from the subject eligible lists.

ORDER

Therefore, it is ordered that these appeals 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 MARCH, 2017


Robert M. Czech

Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Cindy Liebman
Christina Mongon
Kelly Glenn
Records Center