

B-7



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Guy Cappello,
Construction and Maintenance
Technician 5 (S0626T), Department
of Transportation

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List Removal Appeal

CSC Docket No. 2017-233

ISSUED: APR - 5 2017 (WR)

Guy Cappello appeals the removal of his name from the eligible list for Construction and Maintenance Technician 5 (S0626T), Department of Transportation, on the basis of having an unsatisfactory background report and falsification of his employment application.

The appellant, a non-veteran, took the open competitive examination for Construction and Maintenance Technician 5 (S0626T), Department of Transportation, achieved a passing score, and was ranked ninth on the subsequent eligible list.¹ The appellant's name was certified on February 12, 2016.² In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory background report. Specifically, it asserted that a former supervisor of the appellant said during a reference check that the appellant was fired for stealing company information and lying and cheating from the company. The former supervisor also alleged that the appellant had questionable ethics and limited construction knowledge. As the appellant had indicated that he left that company over a disagreement over sales growth, the appointing authority alleged that the appellant falsified his application.

¹ The subject eligible list promulgated on February 11, 2016 and expires on February 10, 2019.
² Agency records indicate that the eligibles listed in the third and fourth positions on the certification were appointed, effective May 28, 2016. The appellant's name was in the second position on the certification.

On appeal to the Civil Service Commission (Commission), the appellant contends that the former supervisor gave him a negative reference because, after leaving that company, Tristate Asphalt, he formed a competing company, Tristate Maintenance, in the same industry. The appellant alleges that his former supervisor regards him as an "adversary and competitor." The appellant further claims that he left Tristate Asphalt over a disagreement in production, stating that "[t]hat is exactly what was told to [him] during [his] exit interview."

In response, the appointing authority reiterates that the appellant was removed from the subject list for the aforementioned reasons, namely because he was fired from Tristate Asphalt for stealing company information. The appointing authority notes that the appellant "only provided one other professional reference on his employment application," but "did not provide authorization for NJDOT to contact this supervisor as a reference."

It is noted on page three of the appellant's employment application, he listed three companies as previous employers: Tristate Maintenance, Tristate Asphalt, and Wurth USA. He listed C.A. as his supervisor at Wurth USA. In a box which asked "May we contact all employers/supervisors listed," the appellant checked no, but listed C.A. as an exception. On the fourth page of his application, he listed C.A. and two other individuals as professional references. He also listed three additional references on a page attached to his resume which was submitted with his application.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. Additionally, *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 an 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 this instant matter, the appointing authority contacted the appellant's former supervisor at Tristate Asphalt, who informed them that the appellant was fired for stealing company information and alleged that the appellant had questionable ethics and limited construction knowledge. Based on the former's

supervisors interview, it concluded that the appellant was not a suitable candidate for employment and the appellant falsified his employment application regarding his reason for leaving Tristate Asphalt. Accordingly, the appointing authority removed the appellant from the subject eligible list. On appeal, the appellant has provided a reasonable and convincing reason why his former supervisor at Tristate Asphalt would give him a negative reference distorted from reality: he left that company to start a competitor. The appointing authority did not submit any information to dispute the appellant's explanation. Rather, it mistakenly asserted that the appellant indicated on his application that it could only contact his former supervisor at Tristate Asphalt. The record clearly demonstrates that he gave permission to contact C.A. and not his former supervisor at Tristate Asphalt.

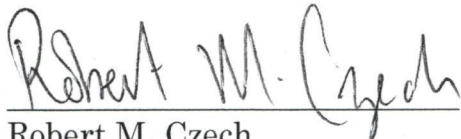
Accordingly, the appellant has sustained his burden of proof and should be restored to the Construction and Maintenance Technician 5 (S0626T), Department of Transportation eligible list.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be reinstated to the eligible list for Construction and Maintenance Technician 5 (S0626T), Department of Transportation, 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 5th DAY OF APRIL, 2017



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