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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of A.O., Laborer 1
(Special), Town of Hammonton

Administrative Appeal

CSC Docket No. 2015-2813

ISSUED: **MAY 05 2017** (ABR)

The Town of Hammonton (Hammonton) requests the approval of its removal of A.O.'s name from the Laborer 1, Hammonton special reemployment list.

By way of background, A.O. was appointed to the title of Laborer 1 by the appointing authority, effective May 14, 2012. A.O. was subsequently laid off from his position, effective April 16, 2014, for reasons of economy or efficiency and his name was placed on the special reemployment list for the title of Laborer 1. A.O.'s name was certified to the appointing authority on March 9, 2015 (certification no. OL150292) with a disposition due date of June 9, 2015. The appointing authority returned the March 9, 2015 certification to the Division of Agency Services on March 24, 2015, whereupon it requested the removal of A.O.'s name from the special reemployment list because the record evidenced that he had furnished it with a fictitious Social Security number (SSN). In support of its request, it provided Agency Services with copies of correspondence between it and the Federal Social Security Administration (SSA) concerning an investigation into the misuse of a SSN and possible identity theft. In a November 3, 2014 letter, the SSA indicated that a person had used the name "[A.O.]" and a particular SSN while earning wages between 2012 and 2014 that did not belong to A.O. The SSA noted that "two (2) or more persons used the same Social Security Account Number, and one of these persons worked/works for [Hammonton]." In a November 25, 2014 letter from the SSA to Hammonton's Chief of Police, the SSA advised that it was "conducting an official criminal investigation involving the misuse of a [SSN] and possible identity theft to conceal a prior criminal history" and it requested a copy of the appointing authority's 2012 background report on A.O. which had been completed as part of its

pre-employment process. In addition to the aforementioned correspondence, the appointing authority provided Agency Services with copies of records from A.O.'s personnel file that it furnished to the SSA, including Withholding Allowance Certificates (Form W-4Ps), Wage and Tax Statements (Form W-2s), a New York driver's license and a Social Security card.

On March 31, 2015, Agency Services returned the certification to the appointing authority for correction with a Disposition Deficiency Notice that indicated that the appointing authority's reasons for A.O.'s removal were not acceptable. The appointing authority appealed that determination to the Civil Service Commission (Commission) by letter dated April 8, 2015. It is noted that the March 9, 2015 certification (OL150292) has not yet been disposed of.

In support of its request to the Commission, the appointing authority argues that because the SSA was confident that A.O. provided Hammonton with a false SSN and "has a criminal background which may or may not affect his position with the Town," there is a sufficient basis to remove his name from the subject special reemployment list. The appointing authority maintains that the SSA's investigator advised that he found that A.O. had provided Hammonton with a fictitious SSN in an effort to hide a past criminal background. However, it claims that the SSA investigator was unable to disclose his findings in writing because the investigation remained open as of April 8, 2015. It also claims that the SSA referred its investigation to the Atlantic County Prosecutor's Office. The appointing authority also maintains that it has been issuing paychecks and W-2 Forms with the fictitious SSN. The appointing authority further claims that A.O. advised Hammonton's Municipal Clerk that he would be using a different SSN upon his reemployment, which he provided to her verbally, but later told Hammonton that, per the advice of his accountant, he would continue to use the original SSN he had on file with it and only use his new SSN on his income tax returns. The appointing authority also contends that A.O. became "extremely agitated and started to cry" when asked to sign a form approving a pre-employment background check. It emphasizes that, because its background investigators may have been given an incorrect SSN, it cannot rely upon the findings of a pre-employment background investigation that previously cleared A.O. for employment. The appointing authority claims that its investigators' ability to perform a thorough background check was also complicated by the fact that A.O. retained a New York driver's license. Based upon the foregoing, it requests that the Commission approve its request to remove A.O. from the subject eligible list.

By letter dated March 20, 2017, staff from the Division of Appeals and Regulatory Affairs specifically advised A.O. of the appointing authority's request to remove his name from the subject special reemployment list and its allegation that he supplied it with a SSN that did not belong to him and that he might have a criminal record. A.O. was also furnished with a copy of the appointing authority's

April 8, 2015 letter detailing the basis of its request to the Commission to remove his name from the list and provided the opportunity to submit any argument or documentation for the Commission to review. Despite an opportunity to do so, neither A.O. nor the appointing authority has furnished additional arguments or documentation for the Commission's review.

CONCLUSION

N.J.A.C. 4A:8-2.3(c)3, in conjunction with *N.J.A.C.* 4A:4-4.7(a)1 and *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from a special reemployment 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:4-4.8(b)6 requires an appointing authority to notify the Commission of the disposition of a certification by the disposition due date with a report of disposition that includes any requested information. *N.J.A.C.* 4A:4-4.7(b)2 provides, in relevant part, that a request for removal of an eligible's name from an eligible list may be denied if an appointing authority fails to provide this agency with copies of the materials upon which it based its request. However, *N.J.A.C.* 4A:4-4.7(b)2 does not require the Commission to automatically deny a request for removal if an appointing authority fails to provide the required material to this agency. Rather, it states that the Commission *may* deny such a request. Thus, even though the appointing authority did not submit the requested documentation to Agency Services pursuant to Agency Services' March 31, 2015 Disposition Deficiency Notice, the Commission may grant the appointing authority's request based upon its review of the record.

The record in this matter demonstrates a sufficient basis to grant the appointing authority's request to remove A.O.'s name from the subject special reemployment list based upon an unsatisfactory background. Here, the appointing authority has alleged that the SSA advised it that A.O. "has a criminal background which may or may not affect his position with [Hammonton]" and hindered its ability to conduct an adequate background investigation by providing an inaccurate SSN. In support, the appointing authority submits correspondence between it and the SSA regarding an investigation into possible misuse of a SSN and identity theft to conceal a prior criminal history. It adds that, prior to its request to the Commission, an SSA investigator advised it that A.O. provided it with a fictitious SSN in an effort to hide a past criminal background. Conversely, in correspondence dated March 20, 2017, A.O. was advised of the appointing authority's specific allegations and provided the opportunity to submit any additional information or documentation to rebut these claims. Despite that opportunity, A.O. has not furnished any arguments or documentation to challenge the appointing authority's

allegations. Based upon the foregoing, the Commission finds there is sufficient justification to remove A.O.'s name from the subject special reemployment list on the basis of an unsatisfactory background.

Finally, it is noted that the Commission's determination in this matter does not preclude A.O. from appealing his removal from the subject special reemployment list pursuant to *N.J.A.C. 4A:2-1.1*, in conjunction with *N.J.A.C. 4A:4-6.3*.

ORDER

Therefore, it is ordered that this request be granted and the March 9, 2015 certification of the eligible list for Laborer 1 (Special), Hammonton be disposed to reflect the removal of A.O.'s name.

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 3RD DAY OF MAY, 2017

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