



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Thomas Schreffler,
Correctional Police Lieutenant
(PS9465I), Department of Corrections

Request for Reconsideration

CSC Docket No. 2019-1259

ISSUED: OCTOBER 29, 2019 (ABR)

The Department of Corrections (DOC) requests reconsideration of the attached final decision, rendered on May 2, 2018, which upheld the removal of Thomas Schreffler's name from the Correctional Police Lieutenant (PS9465I), DOC eligible list on the basis of an adverse employment history.

By way of background, Schreffler's name was certified to the appointing authority on May 3, 2017. The appointing authority requested the removal of Schreffler's name from the eligible list due to an adverse employment history. Specifically, the appointing authority cited a January 11, 2016 official written reprimand on charges of conduct unbecoming a public employee; other sufficient cause; violation of the DOC's policy prohibiting discrimination, harassment or hostile environments in the workplace; and violation of DOC Human Resource Bulletin 84-17, as amended, after the DOC's Equal Employment Division (EED) found evidence that on multiple occasions during and prior to November 2015, the appellant made offensive remarks about Muslims.¹ In its prior decision, the Civil Service Commission (Commission) found that the foregoing provided the appointing authority with a sufficient basis to remove Schreffler from the subject eligible list.

Subsequently, the Division of Agency Services approved an extension of the subject eligible list from its original expiration date of September 9, 2018² to

¹ The appellant appealed his official written reprimand, which was upheld by the Civil Service Commission. See *In the Matter of Thomas Schreffler* (CSC, decided December 7, 2016).

² The original decision incorrectly noted the expiration date as September 10, 2018.

January 17, 2019, when the new list Correctional Police Lieutenant (PS6183I), DOC promulgated.

In its November 2, 2018 request for reconsideration, the appointing authority asserts that the disciplinary charges which led to Schreffler's removal from the PS9465I list had "fallen off" of his work history as of November 1, 2018. Therefore, he became a suitable candidate for appointment to the title of Correctional Police Lieutenant. As such, it contends that this event, coupled with the PS9465I list remaining active after November 1, 2018, provides a sufficient basis to restore Schreffler's name to the PS9465I eligible list. Finally, it notes that as the PS9465I list has now expired, it should be revived to allow Schreffler to be considered for an appointment at the time of the next certification.

Schreffler also requests that the Commission reconsider its prior decision and restore his name to the PS9465I list, arguing that because his disciplinary action "cleared" on November 1, 2018 and the PS9465I list was subsequently extended, his name should be restored to that list. In this regard, he argues that a decision not to restore him to the eligible list would "continue the minor discipline" at issue beyond three years.

CONCLUSION

N.J.A.C. 4A:2-1.6(a) provides that within 45 days of a receipt of a decision, a party to the appeal may petition the Commission for reconsideration. The prior decision in the instant matter was issued on May 2, 2018, but a request for reconsideration was not filed until November 2, 2018, six months after the prior decision was issued. Therefore, the request for reconsideration is clearly untimely.

Similarly, there is not a basis in this particular case to extend or to relax the time for appeal. See *N.J.A.C.* 4A:1-1.2(c) (the Commission has discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the appointing authority's delay in asserting its right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). See e.g., *Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of the Commission's appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). In this case, the appointing authority states that the circumstances surrounding the delay in the issuance of the PS6183I eligible list created a reason to excuse its delay in requesting

reconsideration. However, the Commission does not find this argument persuasive, particularly as this new list is now active and it contains Schreffler's name.

Finally, the Commission notes that because Schreffler's name appears on the PS6183I eligible list, if he is reachable at any point prior to its expiration, the appointing authority will have an opportunity to consider his current suitability for the subject title.

ORDER

Therefore, it is ordered that this request for reconsideration be dismissed as untimely.

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 23RD DAY OF OCTOBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Thomas Schreffler
Lisa Gaffney
Kelly Glenn
Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Thomas Schreffler,
Correction Lieutenant (PS9465I),
Department of Corrections

List Removal Appeal

CSC Docket No. 2018-184

ISSUED: MAY 4, 2018

(ABR)

Thomas Schreffler, represented by Frank M. Crivelli, Esq., appeals his removal from the Correction Lieutenant (PS9465I), Department of Corrections (DOC) eligible list on the basis of an adverse employment history.

The appellant took the examination for Correction Lieutenant (PS9465I), DOC, which had a closing date of November 21, 2014, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on September 10, 2015 and expires on September 10, 2018. The appellant's name was certified to the appointing authority on May 3, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an adverse employment history. Specifically, the appointing authority cited a January 11, 2016 official written reprimand on charges of conduct unbecoming a public employee, other sufficient cause, violation of the DOC's policy prohibiting discrimination, harassment or hostile environments in the workplace and violation of DOC Human Resource Bulletin 84-17, as amended after the DOC's Equal Employment Division (EED) found evidence that on multiple occasions during and prior to November 2015, the appellant made offensive remarks about Muslims.¹

On appeal, the appellant argues that the removal of his name from the subject eligible list should be reversed because the appointing authority failed to

¹ The appellant appealed his official written reprimand which was upheld by the Civil Service Commission. See *In the Matter of Thomas Schreffler* (CSC, decided December 7, 2016).

furnish him with all of the materials it relied upon in requesting that disposition when notifying him of the list removal by letter dated June 28, 2017 or in its responses to his appeal. Specifically, he contends that, with the June 28, 2017 notice, the appointing authority did not provide him with arguments in support of the removal of his name from the subject eligible list. Moreover, he maintains that the appointing authority, in responding to the instant appeal, failed to provide him with requisite copies of correspondence from its officials relating to its removal request and the Civil Service Commission's (Commission) response to the disposition request. Alternatively, the appellant contends that the minor disciplinary action against him does not support his removal from the subject eligible list, as the disciplinary action against him was without merit and was erroneously upheld by the Commission. Namely, he contends that the underlying charges were vague and overbroad, that they were brought by an employee with a personal grudge, that the appointing authority failed to meet its burden of proof in establishing that the alleged conduct occurred and that the Hearing Officer and the Commission failed to consider the bias of the witnesses who testified against the appellant. Moreover, he argues that the appointing authority has a policy of rendering candidates ineligible for promotions with major and minor EED disciplinary actions which is excessive, as the official written reprimand itself is an adequate punishment for the alleged conduct. Moreover, he maintains that because the allegations against him were "unsubstantiated," the removal of his name from the subject eligible list based upon the foregoing official written reprimand is inequitable. The appellant requests a retroactive appointment to the subject title with back pay, seniority and benefits.

In response, the appointing authority contends that the removal of the appellant's name from the subject eligible list was proper, given that the January 11, 2016 official written reprimand stemmed from multiple incidents where the appellant made disparaging remarks about Muslims. It notes that State law and the State Policy Prohibiting Discrimination in the Workplace (State Policy) proscribe harassment and discrimination on the basis of religion. It stresses that Correction Lieutenants, as law enforcement employees, hold a special position of trust that requires an enhanced standard of personal conduct and ethical behavior. Additionally, the status of Correction Lieutenants as higher-level custody supervisors requires it to select candidates who exhibit leadership skills, positive work ethic, fairness and respect for rules and regulations. Furthermore, the appointing authority emphasizes the duty of its supervisors to ensure that the workplace remains free of any form of discrimination or harassment. Towards that end, when it evaluates eligibles for appointment, its Custody Recruitment Unit reviews their work history, weapons privileges status, driver's license status and updated background checks. Given the above-referenced criteria, its considers major disciplinary infractions and major or minor EED-related disciplinary infractions within three years of consideration for appointment to be grounds for bypass on a promotional list, denial of appointment to a custody supervisor position

or removal from a promotional list. In support, it submits copies of its relevant internal policies; the Notification of Minor Disciplinary Action dated January 11, 2016; a record of the determination from the February 11, 2016 disciplinary appeal proceeding; and the Commission's decision in *Schreffler, supra*.

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 removal of 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(b)1 mandates that the appointing authority, upon request of the eligible or upon the eligible's appeal, provide the eligible with copies of all materials sent to the appropriate Commission representative in support of a removal request. *N.J.A.C.* 4A:4-4.7(b)2 provides that a request for removal may be denied if the appointing authority fails to provide either the appropriate Commission representative or the eligible with copies of all documents and arguments upon which it bases its request. *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.

Initially, the Commission observes that the appellant's arguments regarding the imposition of the January 11, 2016 official written reprimand are essentially a request for the Commission to reconsider its decision in *Schreffler*. However, *N.J.A.C.* 4A:2-1.6(a) provides that a request for reconsideration must be filed within 45 days. The appeal in this matter was filed on July 17, 2017, more than seven months after the Commission's above-noted decision and the appellant has not presented a compelling reason to relax the 45-day time limit. Accordingly, there is no basis to reconsider the appellant's January 11, 2016 official written reprimand. Consequently, the appellant's arguments concerning the appropriateness of the official written reprimand will not be addressed in this matter.

With regard to the appellant's claim that the appointing authority failed to provide him with the documents supporting his removal from the eligible list when it initially notified him of his removal, the Commission notes that *N.J.A.C.* 4A:4-4.7(b)1 provides that an appointing authority is required to provide those documents upon an eligible's request or appeal. In the instant matter, the appointing authority provided the supporting documents upon the appellant's appeal. Consequently, there is no basis to restore the appellant's name to the subject eligible list pursuant to *N.J.A.C.* 4A:4-4.7(b)2.

Although the appellant argues that the January 11, 2016 official written reprimand does not warrant the removal of his name from the subject eligible list, the Commission finds that the totality of the circumstances support that action. The Commission notes that it is not bound by criteria utilized by the appointing

authority and must decide each list removal appeal on the basis of the record presented. See *In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005) and *In the Matter of Debra Dygon* (MSB, decided May 23, 2000). As such, the appointing authority's past practice or long-standing administrative policies do not determine whether the Commission can restore or remove an eligible's name from a list. However, the relatively recent timing of the official written reprimand at issue, together with the seriousness of the underlying conduct, support the removal of his name from the subject eligible list. It is noted that the January 11, 2016 official written reprimand was issued after the EED found that the appellant repeatedly made comments which disparaged others on the basis of religion. Moreover, the official written reprimand was issued more than one year after the closing date, four months after the subject eligible list promulgated and less than one year prior to the instant Certification. A Correction Lieutenant is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction Lieutenants, like 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. 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). The public expects Correction Lieutenants to present a personal background that exhibits respect for the law and rules. Clearly, an employment record with recent disciplinary action involving religious discrimination of the State Policy and DOC policy reflects poorly upon the appellant's ability to meet the high standards of conduct expected of a Correction Lieutenant. Accordingly, the foregoing demonstrates sufficient grounds to remove the appellant's name from the subject eligible list on the basis of an adverse employment history and other sufficient reasons. However, it is noted that with the further passage of time, the January 11, 2016 official written reprimand in and of itself will not be a sufficient basis to remove the appellant from an eligible list.

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 2ND DAY OF MAY, 2018

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Thomas Schreffler
Frank M. Crivelli, Esq.
Lisa Gaffney
Jennifer Rodriguez
Kelly Glenn
Records Center