



STATE OF NEW JERSEY

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

In the Matter of Fortunato Montella,
Police Sergeant (PM5117M),
Stanhope

CSC Docket No. 2018-1061

List Removal Appeal

ISSUED: APRIL 30, 2019 (CSM)

Fortunato Montella appeals the appointing authority’s request to remove his name from the eligible list for Police Sergeant (PM5117M), Stanhope, on the basis of an unsatisfactory employment record.

In disposing of the August 28, 2017 certification, the appointing authority requested the removal of the appellant’s name, contending that he had an unsatisfactory employment record. In support of its request, the appointing authority provided a copy of the decision, *In the Matter of Fortunato Montella* (CSC, decided October 7, 2015), in which the Civil Service Commission (Commission) upheld charges against the appellant relating to filing a false police report and imposing a 120-working day suspension. It also provided documentation indicating that the appellant had been suspended for eight days in 2011 for failure to perform duties and violations of department rules and regulations, seven days in 2009 for conduct unbecoming a public employee and violations of borough ordinances, and four days for conduct unbecoming a public employee in 2010.

On appeal, the appellant states that he sent a letter of interest in the position and then received a letter that the process was put on hold. The appellant claims that he was never advised by the appointing authority that his name was being removed from the list. In support of his appeal, the appellant provides a copy of the Administrative Law Judge’s initial decision concerning the matter of filing a false police report.

In response, the appointing authority, represented by Robert J. Merryman, Esq., reiterates that the appellant has a documented unsatisfactory employment history as evidenced by his 120-working day, seven-day, eight-day, and four-day suspensions. It also states that the appellant received reprimands between 2005 and 2013 for sleeping on duty, using vulgar language over the PA system in his patrol car, not following directives with respect to call-out procedures, and failure to properly investigate and document a report of an assault. Therefore, the appointing authority maintains that the appellant should be removed from the list as he is not a suitable candidate for the position.

It is noted that the appellant appealed the matter of his suspension regarding the 120-working day suspension to the Appellate Division, Superior Court of New Jersey. In *In the Matter of Fortunato Montella*, Docket No. A-3143-16T4 (App. Div. decided, November 27, 2018), the Appellate Division upheld the appellant's 120-working day suspension.

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 an eligible's name from an eligible list who has a prior employment history which relates adversely to the position sought.

In the matter at hand, the record establishes that the appointing authority properly removed the appellant's name from the subject list based on his adverse employment history. The position of Police Sergeant is reserved for employees who exhibit leadership skills, a positive work ethic, and respect for the rules in regulations. Thus, a disciplinary history that includes a major disciplinary action reflects serious offenses and shows a lack of respect for such tenets. *See In the Matter of Wayne Hundemann* (MSB, decided May 10, 2006). In the appellant's case, it is clear that his disciplinary history, which includes major disciplinary action, reflects serious offenses, which show a lack of respect for such tenets. *See 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); *In the Matter of Howard Doherty, Correction Sergeant, Department of Corrections (PS7099I)*, Docket No. A-4959-01T1 (App. Div. April 5, 2004) (Removal from Correction Sergeant promotional list upheld for Senior Correction Officer with 25 minor disciplinary actions, 24 of which were imposed for attendance-related infractions); *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 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);

In the Matter of Albert S. Waddington, County Correction Sergeant (PC0349T), Camden County, Docket No. A-568-99T2 (App. Div. December 5, 2000) (Removal from County Correction Sergeant promotional list upheld for County Correction Officer with a lengthy list of counseling reports, poor evaluations, reprimands, minor disciplinary sanctions and two major disciplinary actions over approximately 13 years). Accordingly, the appellant's prior disciplinary history adversely relates to the position sought and is sufficient cause to remove his name from the eligible list. The appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient justification for removing his name from the subject 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 24TH DAY OF APRIL, 2019

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