

she was found not guilty on December 3, 2014 and has been back at work since March 2015. Silva-Ramirez asserts that her job performance has been excellent since her return with no further disciplinary actions. She claims that she has demonstrated her desire to grow in her job performance, has the knowledge and experience to perform the duties of the subject title and has gone through the steps required to be considered for the subject title.

In response to Cerrato, the appointing authority, represented by Albert C. Buglione, Esq., presents that he was suspended for 20 days in 2002. Additionally, it submits documents regarding his conduct concerning a client in 2008, his improper placement of documents into the recycling bin in 2009 and a complaint filed against him regarding his handling of a case in 2009. Further, Cerrato was suspended for six months in 2010 for violating appointing authority regulations in order to acquire eligibility for medical assistance for the children of someone who he had a personal relationship with and the parties reached a settlement on this issue in 2012.

With respect to Silva-Ramirez, the appointing authority presents that the parties reached a settlement where she agreed that her attempts in October 2011 to obtain emergency food stamps benefits for which she was not entitled to receive constituted conduct unbecoming a public employee. This incident led to an April 2015 settlement where Silva-Ramirez agreed to a six-month suspension. The appointing authority asserts that based on this incident, it was appropriate for it to remove her name from the list.

CONCLUSION

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 Civil Service Commission (Commission) to remove an eligible's name from an eligible list for having a prior employment history which relates adversely to the title.

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 these matters, the appointing authority had valid reasons for removing Cerrato and Silva-Ramirez from the list. Specifically, Cerrato and Silva-Ramirez each committed serious offenses as illustrated by their settlements where they both received six-months suspensions. Further, Cerrato's settlement was reached in 2012 and Silva-Ramirez's settlement was reached in 2015. Therefore, based on the serious nature of these offenses, there was insufficient time for them to demonstrate that their employment history was not adverse to the subject title by the May 22, 2017 closing date. It is noted, however, that with the further passage of time and

no further disciplinary infractions, Cerrato's and Silva-Ramirez's employment background will be insufficient to remove their names from future similar lists.

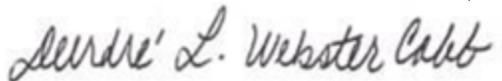
One other matter needs to be addressed. Concerning Silva-Ramirez's complaint that she could apply for the subject examination and sit for the subject test without being advised that her name was going to be removed for an adverse background, it is the appointing authority, and not this agency, that makes an initial determination as to whether to remove a candidate from an eligible list. Further, the appointing authority only needs to make that determination once an eligible's name is certified as it would be overly burdensome to require an appointing authority to review each candidate's background when there is the potential that a candidate's name will never be certified. Similarly, this agency only needs to decide whether that initial determination was in error once an appointing authority returns a certification to this agency. Therefore, it would have been premature for the appointing authority to have advised Silva-Ramirez not to apply for the subject examination or sit for the subject test prior to her name being certified.

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 26th DAY OF FEBRUARY, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: John Cerrato
Sara Silva-Ramirez
Tony DeSimone, Director
Albert C. Buglione, Esq.
Kelly Glenn
Records Center