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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3025-21**

**IN THE MATTER OF
ANA TREJO, POLICE
OFFICER (S9999A),
and UNION CITY.**

Argued October 17, 2023 – Decided October 30, 2023

Before Judges Sumners and Perez Friscia.

On appeal from the New Jersey Civil Service Commission, Docket No. 2022-1785.

Jared Wichnovitz argued the cause for appellant Ana Trejo (Caruso Smith Picini, attorneys; Nicole L. Atlak, on the briefs).

Kenneth B. Goodman argued the cause for respondent Union City (O'Toole Scrivo, LLC, attorneys; Kenneth B. Goodman, of counsel and on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Civil Service Commission (George N. Cohen, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Appellant Ana Trejo appeals from the May 23, 2022 final administrative action of the New Jersey Civil Service Commission (Commission) upholding the removal of her name from the certified eligibility list for the position of police officer with the Union City Police Department (UCPD). We affirm.

I.

In 2009, Trejo began working as a public safety telecommunicator for the UCPD. In December 2019, Trejo took the Civil Service Commission examination for the position of police officer. After the Commission certified the exam results, Trejo ranked 1,633 on the eligibility list. Union City, the appointing authority, subsequently removed Trejo from the police officer eligibility list based on her long history of employment disciplinary actions. The history included minor disciplines for absenteeism, a reprimand for imparting confidential police information, and a major discipline for inappropriate conduct.

In April 2021, Trejo received a "Certification Disposition Notice" from the Commission which provided that her name had been removed from the eligibility list due to her "unsatisfactory employment record." Trejo timely appealed to the Commission. The Commission advised Trejo by letter that based on her "continuous employment discipline between 2012 to 2018, including a

major discipline" there was "clearly sufficient cause to remove her from the eligible list." The Commission declined Trejo's request to present the appeal for a review of the record and closed the matter. Trejo requested the Commission reconsider submission of her appeal for a full review of the record and discovery. The Commission reopened the matter and advised Trejo that a "decision in this matter [would] be rendered on the basis of written argument and documentation."

In December 2021, the Commission issued a final administrative action denying Trejo's appeal and her request for an evidentiary hearing. Trejo then moved for reconsideration. In May 2022, the Commission issued a final administration action denying Trejo's request for reconsideration. Relying on N.J.A.C. 4A:2-1.1(d), the Commission considered the parties' submissions and determined that because no "material and controlling dispute of fact exist[ed]," a hearing was not required and the "appeal w[ould] be reviewed on a written record." The Commission's final administrative action denying reconsideration stated:

Specifically, the only material facts in this case, as stated in the original proceeding, are that Trejo had continuous employment discipline between 2012 to 2018, including a major discipline where she acknowledged in a settlement that she violated various administrative rules for behavior that ended less than

one year prior to the August 31, 2019 closing date. Regarding the major discipline in question, the Final Notice of Disciplinary Action (FNDA) states the sustained charges were based on the following: Between May 22, 2018 and October 19, 2018, PST Trejo sent Sergeant M. approximately 370 text messages. Contained with the text messages: (1) PST Trejo expresses a desire to "fuck (Sergeant M.) up and trash his car" and to seek "justice;" (2) PST mentions that she is having trouble communicating with Sergeant M. regarding issues of work because of the animosity between her and Sergeant M; (3) PST Trejo threatens to expose Sergeant M.'s extramarital affair to his wife; and PST Trejo refers to Officer V. as a "bitch." Further, Trejo does not deny these allegations. To the contrary, instead of appealing this disciplinary action, she settled the matter. The fact that the suspension was only six days does not suggest that her actions were not significant as she agreed to accept major discipline. See N.J.A.C. 4A:2-2.2(a)[(3)]. Therefore, based on her lack of appeal, the Commission found that Trejo admitted to such behavior. Further, such behavior is clearly adverse to being a [p]olice [o]fficer as [p]olice [o]fficers must follow superiors' orders and maintain good working relationships with other [p]olice [o]fficers as well as other municipal employees and the general public. Therefore, the record indicated that Trejo lacked the high standards, including good judgment and character, to be a [p]olice [o]fficer.

. . . .

Concerning Trejo's claim that the Commission made clear material error by not addressing her "disparate treatment" claim, Trejo presents that she certified in her initial appeal, "based on my information and belief, other candidates for employment to the police officer position have had similar and/or more serious

disciplinary and/or criminal violation, and were hired by the Department." However, the Commission did not address her statement as she did not present one scintilla of evidence to support her "belief" as she did not present any individuals, documents, or other evidence to support her claim. Trejo argues that she did not provide the alleged "favored" appointees with her initial appeal because the appointing authority already has this information and it did not want to provide the it [sic] an advantage prior to a hearing is unpersuasive as the Commission does not have the alleged unfavorable backgrounds of the alleged favored appointees. It is also noted that Trejo, for the first time on reconsideration, is making her "disparate treatment" claim based on her membership in a protected class, a Hispanic female. Trejo has offered no explanation as to why she did not indicate in the initial appeal that her alleged "disparate treatment" was based on her being a Hispanic female.

. . . .

Moreover, although Trejo does not provide the names of the alleged favored appointees and any supporting evidence to demonstrate that these appointees had adverse backgrounds, for the first time on reconsideration, she specifies the adverse backgrounds that she alleges that these ["favored" appointees possess.

The Commission found that "Trejo failed to meet the standard for reconsideration as she has not presented new evidence that would change the outcome and she has not demonstrated that a clear material error occurred." The Commission noted Trejo in providing the names of the alleged appointees did

not provide "any supporting evidence to demonstrate that these appointees had adverse backgrounds" or evidence of disparate treatment because she was a Hispanic woman.

II.

On appeal, Trejo argues the Commission should have referred her appeal to the Office of Administrative Law for an evidentiary hearing before an Administrative Law Judge because material facts were in dispute. Trejo also avers the Commission committed clear material error in: (1) failing to address her arguments of unlawful favoritism by Union City in hiring other individuals with "more serious disciplinary record and/or criminal infractions, . . . which [wa]s the basis of the [a]ppointing [a]uthority being selective in hiring/promoting"; (2) accepting her disciplinary history which she alleged was partly explainable due to a medical condition and her belief that the 2019 major discipline was confidential; and (3) failing to address that, as a Hispanic female, "she was treated differently than other similarly situated candidates based upon her membership in a protected class." Trejo posits Union City's and the Commission's actions were unlawful, arbitrary, and capricious. We disagree.

We affirm the denial of appellant's appeal without an evidentiary hearing substantially for the reasons expressed by the Commission in its written

decision. The Commission's final administrative action "is supported by sufficient credible evidence on the record as a whole" and does not warrant extended discussion. See R. 2:11-3(e)(1)(D). We add the following comments.

Our scope of review of the final administrative action of an agency is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). The party challenging the final administrative action has the burden to demonstrate grounds for reversal. Lavezzi v. State, 219 N.J. 163, 171 (2014). An appellate court may only reverse an agency's decision where it finds that the decision is "arbitrary, capricious or unreasonable or . . . not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980). In determining if an agency's decision is arbitrary, capricious or unreasonable, we examine "(1) whether the agency's action violates express or implied legislative policies," (2) whether there is substantial evidence in the record to support the agency's decision, and (3) whether in applying the law to the facts, the agency reached a conclusion "that could not reasonably have been made on a showing of the relevant factors." Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting In re Stallworth, 208 N.J. 182, 194 (2011)). We "may not substitute [our] own judgment for the agency's even though [we] might have reached a

different result." In re Carter, 191 N.J. 474, 483 (2007) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Stallworth, 208 N.J. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)).

The New Jersey Constitution provides in pertinent part that "[a]ppointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive." In re Foglio, 207 N.J. 38, 43-44 (2011) (alteration in original) (quoting N.J. Const. art. VII, § 1, ¶ 2). The Civil Service Act (CSA), N.J.S.A. 11A:1-1 to 12-6, and regulations promulgated pursuant to the CSA, implement the policies underlying this constitutional provision. Id. at 44 (citing N.J.S.A. 11A:2-6(d)). The CSA and the regulations generally provide for merit-based appointments to positions in the civil service. Ibid. If there is a vacancy in a civil service position for which an examination is required, the CSA "provides for an examination process." Ibid. (citing N.J.S.A. 11A:4-2). "When an examination is announced, minimum qualifications for the position must be posted." Ibid. (citing N.J.A.C. 4A:4-2.1).

"After the examination, an eligible list is published ranking all passing candidates by score, with special ranking rules for veterans and for tie scores." Ibid. (citing N.J.A.C. 4A:4-3.2). If "an appointing authority requests a list of candidates for a vacant position, the [Commissioner of Personnel] will issue a certification 'containing the names and addresses of the eligibles with the highest rankings on the appropriate list.'" Ibid. (citing N.J.A.C. 4A:4-4.2(a)). Pursuant to N.J.A.C. 4A:4-4.7(a): "The name of an eligible may be removed from an eligible list . . . [for a] cause[] for disqualification listed in N.J.A.C. 4A:4-6.1." A listed cause for removal is "a prior employment history which relates adversely to the title." N.J.A.C. 4A:4-6.1(a)(7).

The Commission's decision is supported by the record and consistent with applicable law. Although Trejo argues the reprimands and disciplines were excusable, specifically the absenteeism disciplines and the 2019 major discipline, no credible evidence to dispute the disciplinary actions taken was provided. Trejo alleges she believed the March 2019 major discipline was confidential, but the written settlement referenced is not cited as having provided for confidentiality. The Commission correctly found Trejo either accepted or settled multiple disciplinary actions; thus, her seeking to thereafter mitigate the history with explanation did not credibly refute the finding that her

employment history "relate[d] adversely to the title" of a police officer. Similarly, Trejo's claims of disparate treatment based on Union City's unlawful favoritism in hiring other individuals with similar or worse disciplinary histories, and discrimination against her as a Hispanic woman in a protected class by hiring only men, were "mere allegations" made without a "scintilla of evidence to support" her "belief." Trejo was notified of the selected candidates but failed to demonstrate a prima facie showing of disparate treatment. We concur that mere speculative statements are insufficient to create factual disputes warranting a hearing and that no new evidence or clear material error was shown.

In sum, we conclude the Commission did not abuse its discretion when it declined to reconsider Trejo's appeal, and upheld Union City's decision to remove her from the police officer eligibility list based on her "unsatisfactory employment record," without the need for an evidentiary hearing.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION