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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Douglas (Dragoljub)
Ilic, Police Officer (Special), City of
Paterson

Request for Reconsideration

CSC Docket No. 2014-1265

ISSUED: JUL 21 2014 (WR)

Douglas (Dragoljub) Ilic,¹ represented by Patrick Caserta, Esq., petitions the Civil Service Commission (Commission) for reconsideration of its attached final decision, rendered on October 2, 2013, which upheld the removal of his name from the Police Officer (Special), City of Paterson eligible list on the basis of having an unsatisfactory criminal record.

The appellant was laid off from his title of Police Officer with the appointing authority on April 18, 2011 and his name was placed on the special reemployment list (SRL). The SRL was then certified on June 19, 2012. In disposing of the certification, the appointing authority removed the appellant's name from the SRL on the basis of having an unsatisfactory criminal record. As set forth in detail in the attached decision, the Commission upheld the removal due to the nature of the charged offenses and the fact that, as a Police Officer, the petitioner is held to a higher standard than other people.

In his request for reconsideration, the petitioner reiterates that all of the charges against him have been dropped. Regarding the April 11, 2009 altercation that occurred in Hoboken, the petitioner emphasizes that the charges were dropped not because of a negotiated resolution, but rather because the complainant, after "press[ing] the municipal prosecutor to proceed on the charges," failed to appear for the hearing. In this regard, the petitioner states that the charge resulted from his

¹ The appellant was formerly known as Dragoljub Ilic. However, some personnel records and correspondence also refer to him as "Dragoljue."

attempt to prevent harm by breaking up an altercation where the complainant was unruly and therefore, he should not be punished. Moreover, he argues that because the incident occurred while he was employed as a Police Officer with the appointing authority and was not disciplined at the time, it should not be a basis for removing his name from the subject eligible list. Regarding the November 17, 2011 domestic violence incident from Passaic County, the petitioner explains that it was an isolated event where he was under stress from being laid off and "became very upset" after he saw a picture of his then-wife's ex-boyfriend on her computer screen. The petitioner contends that the incident was brief and he did not physically harm her but rather he only damaged property. In this regard, the petitioner states that while his then-wife initially told the police that the petitioner attacked her, she testified before a grand jury that he did not attack her. In support, the petitioner submits a transcript of the Grand Jury testimony of his wife in which she states that there were a "couple [of] minor things in the police report that were not accurate." Specifically, she maintained that she did not remember how she was cut, that the petitioner was slashing at the wall with a box cutter and he turned towards her and she could not remember anything more. After this incident, the petitioner states that he entered into a Pretrial Intervention program and, after successfully completing an anger management program, the charges were dropped.

The petitioner further states that although he does not want to "blame the victim," E.O., his ex-wife, has been involved in other domestic violence incidents with other men, one of whom was also a Police Officer with the appointing authority and who had resigned from his position as a result. In support, he submits a 2004 Internal Affairs report regarding a domestic violence incident between E.O. and the other officer. The petitioner asserts that E.O. "brings out highly emotional reactions in men that otherwise have no history of any such problems." Finally, the petitioner claims that the domestic violence incident would not warrant his removal were he still employed with the appointing authority, and therefore it should not be sufficient to remove his name from the subject eligible list.

It is noted that despite the opportunity to respond to the petitioner's request for reconsideration, the appointing authority did not do so.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

Initially, it is clear that eligibles on a special reemployment list are subject to an updated criminal background check. Consequently, an eligible may be removed

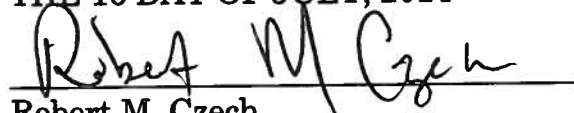
from a special reemployment list if he or she has an unsatisfactory criminal record. The Commission observes that unlike disciplinary proceedings, the appellant has the burden of proof in list removal appeals. *N.J.A.C. 4A:2-1.4(c)*. In the instant matter, the petitioner explains the circumstances of the Hoboken and domestic violence incidents. He contends that he should not be prejudiced by these incidents because he was not disciplined for the Hoboken incident and, were he still employed with the appointing authority, he likely would not have been disciplined for the domestic violence incident. However, as detailed in the attached decision, his criminal history is patently adverse to the position of a Police Officer. Therefore, the petitioner has not shown that a clear material error has occurred nor has he presented new evidence or additional information not presented at the original proceeding which would change the outcome of the case. Accordingly, under the circumstances presented, there are no grounds on which to grant reconsideration of the prior decision.

ORDER

Therefore, it is ordered that the request for reconsideration 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 16 DAY OF JULY, 2014


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Attachment

**c: Douglas Ilic
Patrick J. Caserta, Esq.
Charles Thomas
Joseph Gambino
Kenneth Connolly**



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Douglas (Dragoljub)
Ilic, Police Officer (Special), City of
Paterson

List Removal Appeal

CSC Docket No. 2013-2721

ISSUED: OCT 02 2013 (WR)

Douglas (Dragoljub) Ilic,¹ represented by Patrick Caserta, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that the appointing authority had presented a sufficient basis to remove his name from the eligible list for Police Officer (Special), City of Paterson, on the basis of having an unsatisfactory criminal record.

The appellant was laid off from his title of Police Officer with the appointing authority on April 18, 2011 and his name was placed on the special reemployment list (SRL). The SRL was then certified on June 19, 2012. In disposing of the certification, the appointing authority removed the appellant's name from the SRL on the basis of having an unsatisfactory criminal record. In this regard, the appointing authority indicated that on June 14, 2012, it offered the appellant employment conditional on his successful completion of, in part, a criminal background investigation. The criminal background investigation revealed that the appellant was indicted on charges of aggravated assault, criminal mischief, possession of a weapon for an unlawful purpose, and unlawful possession of a weapon which resulted from his involvement in a domestic violence-related event on November 17, 2011. It also revealed that on April 11, 2009, the appellant, while still employed with the appointing authority, was arrested for aggravated assault for his alleged involvement in a fight. That charge, however, was dismissed due to

¹ The appellant was formerly known as Dragoljub Ilic. However, some personnel records and correspondence also refer to him as "Dragoljue."

lack of prosecution.² The appellant appealed to CPM, asserting that he had not been convicted of any crimes or disorderly persons offenses. However, CPM determined that the appointing authority had presented a sufficient basis to remove the appellant's name from the SRL.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the appointing authority "paints an inaccurate picture" of the events that led to his aggravated assault charge in 2009. He contends that he was not engaged in a fight, but rather intervened "when the so-called victim (a male) attempted to engage a female in a verbal and perhaps physical altercation." Nevertheless, he claims that "it is entirely unfair to bring up these events" because the charges were dropped. He also argues that he has successfully complied with all of the terms of a Pretrial Intervention (PTI) Program with regard to the 2011 incident. Therefore, he states that his PTI officer has applied to the court for early termination of his PTI, which will result in the dismissal of the charges resulting from the domestic violence-related incident. He notes that he must receive approval from the county prosecutor's office before he can be re-armed with a firearm. Such approval, he states, may be conditioned on receiving anger management counseling, review by a psychologist, etc. The appellant claims that successful completion of this process would prove that he "is qualified and fit to continue his career in law enforcement" and therefore requests that he "be given the opportunity to regain his position through [this] process and should be reinstated to the eligible list." In support, the appellant submits a letter from his PTI officer to Hon. Marilyn C. Clark, PSJC, indicating that the appellant has complied with the terms of his PTI program and requesting a dismissal of his charges.

In response, the appointing authority, represented by Steven Glickman, Esq., reiterates that it properly removed the appellant from the subject eligible list due to his unsatisfactory criminal record. It sets forth the 2011 charge against the appellant and states that "[t]o make matters even worse, the victim of this alleged criminal conduct is a Paterson Police Officer.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C. 4A:4-4.7(a)(4)*, provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-*

² The appointing authority indicated it did not take administrative action against the appellant.

4.7(a)(4) to determine whether the appellant's criminal history adversely relate to the position of Police Officer. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the [Commission] or designee may determine. *See N.J.A.C. 4A:4-4.7(a)4ii; see also, N.J.S.A. 2C:52-27(c).*

The record reflects that the appellant was indicted on charges of aggravated assault, criminal mischief, possession of a weapon for an unlawful purpose, and unlawful possession of a weapon which resulted from his involvement in a domestic violence-related event on November 17, 2011. The appellant claims that he has successfully complied with the terms of his PTI Program and these charges will therefore be dismissed.

Participation in the PTI Program is neither a conviction nor an acquittal. *See N.J.S.A. 2C:43-13(d). See also Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A. 2C:43-13(d)* provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's 2009 arrest and 2011 indictment and entry into the PTI Program can still be properly considered in removing his name from the subject eligible list. *Compare, In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

While the appellant essentially contends that his compliance with the PTI Program evidences his rehabilitation, it is clear that the appointing authority had

sufficient cause to remove his name from the SRL.³ Domestic violence-related offenses are serious offenses. Whether or not this was an isolated event, it occurred only seven months before the appellant accepted the appointing authority's conditional offer of employment. Nevertheless, it is noted that the appellant was arrested in 2009, notwithstanding that the charges were dismissed due to lack of prosecution. Moreover, the appellant was an adult when the 2011 indictment occurred. He was also employed as a Police Officer nearly seven months before that incident. In this regard, the Commission has long recognized that a Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. It must also be recognized that a Police Officer is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service firearm on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *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 Police Officers to present a personal background that exhibits respect for the law and rules. Therefore, the Commission finds that the appellant's criminal history adversely relates to the position of Police Officer.

Accordingly, the appellant has failed to meet his burden of proof in the matter and a sufficient basis exists in the record to remove the appellant's name from the eligible list for Police Officer (Special), City of Paterson.

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.

³ The appointing authority may conduct an updated background investigation of the appellant regardless of his prior employment with the City of Paterson.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2nd DAY OF OCTOBER, 2013



Robert M. Czech
Chairperson
Civil Service Commission

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Attachment

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