

B-42



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Steffon Josey-Davis,  
Police Officer (S9999R),  
North Brunswick

CSC Docket No. 2015-3299

List Removal

ISSUED: **AUG 19 2015** (DASV)

Steffon Josey-Davis appeals the removal of his name from the Police Officer (S9999R), North Brunswick, eligible list due to his failure to respond to the Notice of Certification.

By way of background, the appellant, a nonveteran, appeared on the Police Officer (S9999R), North Brunswick, eligible list, which promulgated on May 2, 2014 and expires on May 1, 2016. The appellant's name was certified in the 13<sup>th</sup> position on August 21, 2014. In disposing of the certification, the appointing authority requested the removal of the appellant's name for failure to respond to the Notice of Certification. It is noted that the appellant did not file an appeal at that time. It is further noted that the Police Officer (S9999R), North Brunswick, eligible list was last certified on February 10, 2015. Although the appointing authority returned the certification on July 22, 2015, the disposition has not yet been approved by this agency.

On appeal to the Civil Service Commission (Commission),<sup>1</sup> the appellant indicates that he was previously certified on October 11, 2013 from a prior eligible list for Police Officer (S9999M), North Brunswick, but due to "legal troubles," he had to withdraw from the process.<sup>2</sup> It is noted that the appellant was convicted of one count of unlawful possession of a weapon, a second degree crime. *See N.J.S.A. 2C:39-5(b)*. Specifically, the appellant was arrested on September 20, 2013 for

<sup>1</sup> The appellant's appeal was postmarked June 20, 2015.

<sup>2</sup> The appellant was recorded as being interested in future certifications.

having left his firearm in the glove compartment of his car. He thereafter sought a pardon from the Governor, which was granted on June 8, 2015. Additionally, because the appellant was "still going through legal battles," he states that he did not respond to the August 21, 2014 certification of the subsequent Police Officer (S9999R), North Brunswick, eligible list. The appellant was under the assumption that he would remain active until the expiration of the eligible list on May 1, 2016. Moreover, the appellant maintains that he received a full pardon from the Governor regarding his criminal conviction. Therefore, he requests that he be allowed to pursue his dream of becoming a Police Officer and given the opportunity to be a "Hometown hero." The appellant notes that he graduated from North Brunswick High School and played football for the Township. Additionally, the appellant submits that he is still eligible for a position in other locations, but North Brunswick is his home. He emphasizes that he received a final score of 97.16 on the Law Enforcement Examination (S9999R). Thus, he believes that "as an individual with a high score," he should be "given the chance to succeed." In support of his appeal, the appellant states that an article was written about him in NJ.com, which reports that the North Brunswick Police Director has indicated that the appellant was fourth on the eligible list prior to his legal troubles and he need only contact this agency to be placed back on the eligible list for consideration. Additionally, according to the article, the Police Director stated that there would be retirements in September and October and if the appellant re-applies, he would be number one on the list.

In response, the appointing authority, represented by Arlene Quinones Perez, Esq., asserts that the NJ.com article and the information submitted by the appellant implies that the Police Director believes that the appellant should be number one on the Police Officer (S9999R) eligible list. However, it states that the foregoing is misleading since the Police Director "has taken no official position on whether [the appellant] is qualified to serve as a [P]olice [O]fficer in North Brunswick."

## CONCLUSION

Initially, with regard to timeliness, it is noted that there is no jurisdictional statutory timeline within which the appellant was required to appeal. *See Matter of Allen*, 262 N.J. Super. 438 (App. Div. 1993). Nevertheless, N.J.A.C. 4A:4-6.6(a)1 provides that an appeal shall be filed within 20 days of the notice of the action, decision or situation being appealed. *See also* N.J.A.C. 4A:2-1.1(b). Additionally, the Commission in its discretion may extend or relax the 20-day time period for "good cause." *See* N.J.A.C. 4A:1-1.2(c). In the instant matter, the record indicates that the appellant did not file an appeal at the time of his removal from the Police Officer (S9999R), North Brunswick, eligible list. While the appellant does not specifically address the issue of timeliness, he nevertheless advises that he was under the assumption that he would remain active until the expiration of the list. Although the appellant is correct that he was not removed from the pool of eligibles

(S9999R),<sup>3</sup> he was still required to file an appeal since he was removed from the Police Officer (S9999R), North Brunswick, eligible list. Nonetheless, it is clear that the reason that the appellant did not respond to the Notice of Certification was because of his legal issues, which apparently also affected his filing an appeal of his removal. Once he received the Governor's pardon, the appellant filed the instant appeal within 20 days. Therefore, under these particular circumstances, the Commission finds good cause to relax the 20-day time period and address the merits of the appellant's appeal.

*N.J.A.C.* 4A:4-4.7(a)6 provides that an eligible's name may be removed from a list for "non-compliance with the instructions listed on the notice of certification." *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 the appellant from an eligible list was in error.

In the instant matter, there is no dispute that the appellant did not respond to the Notice of Certification. As indicated above, because of his legal issues, the appellant chose not to respond. It is indeed plausible for the appellant not to have pursued the process of becoming a Police Officer, given his pending criminal charges and subsequent conviction, which would have disqualified him from consideration. However, the appellant has since received the Governor's pardon. Additionally, it is emphasized that failure to respond to the Notice of Certification is not a removal for cause which would remove an eligible from the pool of eligibles, and it only removed the appellant from the Police Officer (S9999R), North Brunswick, eligible list. Further, while the appointing authority clarifies that it takes no position as to the appellant's qualifications at this time, it does not challenge the appellant's restoration to the subject eligible list. In addition, the appellant indicates that he is a resident of North Brunswick, and he did in fact receive a high score on the Law Enforcement Examination (S9999R). Under these circumstances, the Commission finds a sufficient basis to restore the appellant's name to the Police Officer (S9999R), North Brunswick, eligible list, for prospective appointment opportunities only. The Division of Agency Services shall determine the appellant's proper placement on the next certification(s) of the Police Officer (S9999R), North Brunswick, eligible list. It is noted that this decision is based on unique circumstances and shall not serve as a precedent for other matters.

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<sup>3</sup> *N.J.A.C.* 4A:4-4.7(g) states that when "the [Commission] has accepted a single application for one or more title areas, pursuant to *N.J.A.C.* 4A:4-2.3(c), an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area." Cause to remove an eligible from the pool of eligibles would include an adverse criminal record, unsatisfactory employment history, unsatisfactory background, etc. See *N.J.A.C.* 4A:4-6.1 and *N.J.A.C.* 4A:4-4.7. Failure to respond to a specific Notice of Certification would not remove an eligible from the pool of eligibles.

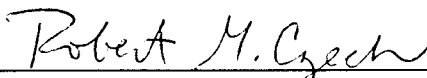
It is further noted that since there has not been a demonstrated error on the part of this agency or the appointing authority, the relief granted to the appellant can only be prospective. In this regard, *N.J.A.C.* 4A:4-3.6(b) requires placement on an existing certification or retroactive certification or appointment rights in order to correct an agency error. The record reflects that the appellant did not respond to the subject certification notice and the appointing authority appropriately exercised its discretion to request the removal of his name from the subject eligible list on that basis. See e.g., *In the Matter of Vincent Hutcheson* (MSB, decided January 31, 2007); *In the Matter of Leigh Simons* (CSC, decided July 15, 2015). Moreover, individuals whose names merely appear on a list do not have a vested right to appointment. See *In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984); *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

### ORDER

Therefore, it is ordered that this appeal be granted, and Steffon Josey-Davis' name be restored to the eligible list for Police Officer (S9999R), North Brunswick, for prospective appointment opportunities only.

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 19<sup>TH</sup> DAY OF AUGUST, 2015

  
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