



STATE OF NEW JERSEY

In the Matter of Bryant Rowan, Jr.,
Police Officer (S9999R), Jersey City

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-3605

List Removal Appeal

ISSUED: **NOV 29 2016** (SLK)

Bryant Rowan, Jr., represented by Jeffrey J. Berezny, Esq., appeals Jersey City's decision to remove his name from the Police Officer (S9999R), Jersey City, eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Police Officer (S9999R), achieved a passing score, and was ranked on the subsequent eligible list. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory background. Specifically, on June 1, 2005, at age 14, the appellant was arrested for criminal trespass when he climbed on the roof of a home and went through an open window looking for a fellow juvenile. Under the Juvenile Conference Committee Agreement/Court Order (JCC), the appellant agreed to complete 5 hours of community service and write a letter of apology to the victim. The case was dismissed on December 1, 2005. On July 27, 2008, at age 17, the appellant was called into the police station because he was involved in a fight with another juvenile. The appellant and the other juvenile had arguments which escalated into a physical confrontation. No arrests were made; however, the appellant failed to disclose this incident on his Background Investigation Questionnaire. On December 7, 2010, at age 20, the appellant was charged with disorderly conduct after he drove on power lines. The police report indicates that the appellant's ex-girlfriend was dropped off by a male, the appellant and the male exchanged words, and then the appellant drove away from the scene and onto power lines. The charge was amended and the appellant paid a fine for unsafe operation of a vehicle. On August

24, 2014, at almost age 24, the appellant was charged with simple assault. The police report stated that the appellant threatened a female he was eating with and then exchanged words with the female's boyfriend, who was his friend. Thereafter, the appellant struck the boyfriend on the right side of his face causing a laceration and his eye to swell up. The boyfriend signed a complaint for simple assault against the appellant. The case was dismissed after mediation and no fines were assessed. Additionally, the appellant received six motor vehicle moving violation summonses and had been involved in four motor vehicle crashes.

On appeal, the appellant indicates that he is 25 years old, has been employed as an Emergency Medical Technician for approximately 9 years, and is also a Construction Foreman for the Jersey City Municipal Utility Authority. He states that he obtained a Firearms Purchaser Identification Card in November 2015. He asserts that, besides a criminal charge that occurred almost 11 years ago when he was only 14 and 2 non-serious petty disorderly offenses that occurred a few years ago, he has never been arrested, charged or convicted of a crime and has otherwise lived a good life. He attaches several letters of recommendation. With respect to the criminal trespass charge that occurred when he was 14, he explains that he was visiting his friend, maintains he was always allowed to use the side window to enter his friend's house, his friend's brother let him in, and there was no trespass. He maintains that his friend's mother had an issue with his family and wrongfully filed a trespass claim which was dismissed upon his completion of 5 hours of community service and an apology letter. He states that the second juvenile incident occurred when he was 17 and he was merely called in to the police as a witness for an investigation. He contends that he was confronted by another juvenile who had been bullying him and was called in to the police station to give a statement. He asserts that he did not commit any wrongdoing, no criminal complaints were ever filed, and he never received any documentation concerning this incident.

In regard to the power lines incident, he states that it occurred over 5 years ago when he was 20 years old. He represents that there was an unpaved right of way or easement under power lines near his home and that some people would ride off-roading vehicles there. He indicates that he was issued a summons for a disorderly persons offense because the road was evidently private property. He pled guilty to an unsafe operation of a vehicle (non-point) violation. He maintains that there was no confrontation that day and acknowledges that he should have used better judgment using this unpaved area. In reference to the incident that occurred two years ago while at a restaurant, he claims that he was being physically assaulted and that the assailant filed a criminal complaint as a defensive tactic in an attempt to protect himself from the possibility of having the appellant filing a criminal complaint. He maintains that he began speaking with a female friend when her then boyfriend then physically assaulted him twice leaving him no choice but to defend himself. The appellant contends that the witnesses made self-serving statements to the Police and he did not initiate the altercation, which is why he

filed a counter-complaint for assault. He presents that the charges were dismissed after mediation and he reiterates that he was innocent and a victim. He argues that his driving record should not be a factor in this matter as he suggests that it was not included in the appointing authority's original basis to remove his name from the list. However, if it is considered, he acknowledges that early in his driving history he received a few non-serious motor vehicle infractions, but indicates that his license was never suspended and he has not had an infraction for almost 5 years. He states that he was involved in only four motor vehicle accidents and represents that two were not his fault as he was rear-ended and the other two were minor "fender benders."

He maintains that his criminal record, which did not involve any arrests and only consisted of three non-serious charges that were dismissed, does not adversely relate to the position of Police Officer and does not warrant his removal from the list. The appellant cites many cases where the Civil Service Commission (Commission) found that an appellant's removal from a law enforcement list was not warranted based on the nature of the offense, the actual disposition of the charge, the appellant's rehabilitation, and the passage of time. He contends that, since the successful completion of a Pre-Trial Intervention (PTI) does not have the stigma of a criminal conviction, and that the appellant successfully completed a JCC, which is for offenses that are less serious than PTI matters, his first juvenile offense should not have the stigma of a criminal conviction and be used as a reason to remove his name from the list. Similarly, the appellant highlights that the later disorderly persons charge was really just a motor vehicle offense and the simple assault charge was dismissed through mediation. Therefore, he believes that it would be unfair to remove his name for minor, low-level charges that were ultimately dismissed. The appellant also argues that in order to be removed for an unsatisfactory driving record, one needs to show numerous and serious traffic offenses and/or license suspensions. However, he asserts that his driving record is not poor as his license has never been suspended, he has only had a few non-serious tickets, and that it has been almost five years from his last infraction. Similarly, he presents that he was involved in four automobile accidents and claims that two were not his fault since he was rear-ended and the other two were minor "fender benders."

Further, as part of the appellant's certification, he submits a current letter from the female who was the subject of the exchange of words between the appellant and the other male which preceded the off-road power lines incident. The female states that the male that she was with had a problem with her speaking with the appellant, that there was never any confrontation, and, at worst, there was an exchange of words which was not the appellant's fault. She characterizes the event as a minor, non-issue that was blown out of proportion by the Police since the appellant apparently drove his motor vehicle in an area near power lines that people have used for off-roading. She represents that the appellant has a good

character and she believes that he would be a good Police Officer. He also submits a current statement from a male who was part of the appellant's group that was eating with him in a restaurant two years ago when he was charged with simple assault. This individual presents that one of the males in the group assaulted the appellant twice and he had no choice but to defend himself and that the appellant did not initiate any altercation or threaten anyone. He believes that the appellant would make a good Police Officer. The appellant also believes that the appointing authority is treating him unfairly in comparison to minority candidates. He attaches articles where the Mayor highlights that 70 percent of the new Police Officers are minorities, where the Mayor states that it is the goal of the appointing authority to make sure that the police department resembles the diversity of Jersey City, and an article that cites a report that indicates that the police department has been more flexible with minor offenses on an applicant's record, like a 10-year-old possession of marijuana charge.

In response, the appointing authority, represented by Vincent Signorile, Assistant Corporation Counsel, argues that the appellant was involved in various incidents with the Police which show a pattern of behavior that adversely relates to the position sought. It asserts that the incidents described above do not demonstrate that the appellant has the background to be a Municipal Police Officer, which is a highly visible position and that Police Officers must be able to present an image of integrity and reliability to the public. The appointing authority submits its background report and other documentation to support its decision.

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C. 4A:4-4.7(a)4* provide 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. 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.

Further, it is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were

properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision. However, *N.J.S.A. 2A:4A-48* provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. Accordingly, the disability arising under *N.J.A.C. 4A:4-4.7(a)4* as a result of having a criminal conviction has no applicability in the instant appeal.

Additionally, 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 entry into the juvenile diversion program which is similar to the PTI program could 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).

N.J.A.C. 4A:4-4.7(a)11, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, provides that the name of an eligible may be removed from an eligible list person for other sufficient reason.

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 the instant matter, the appointing authority has presented a valid basis to remove the appellant's name from the subject list. The appellant, at age 14, was charged with criminal trespass for an incident that took place in June 2005. Although the appellant claims that he was completely innocent, the record indicates that, while participating in a JCC, he agreed to complete 5 hours of community service and write an apology to the victim's parents. In February 2008, the appellant received a motor vehicle summons for maintenance of lamps. In July 2008, at age 17, the appellant was interviewed by the Police. The appellant claims that he was brought in to the police station as a witness regarding an incident where he was bullied. However, the police report indicates that the other party reported the incident to the Police and claimed that he was assaulted by the

appellant. Further, the appellant admitted that he and the other person were having on-going issues and that it was resolved after a fight. Additionally, the appellant acknowledged that he had been writing derogatory remarks about this other person on MySpace. No further action was taken by the Police for this matter.

In June 2009, the appellant received a motor vehicle summons for obstructing passage of other vehicle. In May 2010, he received a motor vehicle summons for careless driving. In December 2010, at age 20, the appellant was initially charged with disorderly conduct and he pled guilty to an unsafe operation of a vehicle charge. The appellant claims that the only thing that he did wrong was that he mistakenly drove on private property near power lines. Additionally, he submits a current letter from a female witness who stated that another male had an issue with her speaking with the appellant and, through no fault of the appellant, words were exchanged, but there was no confrontation. However, the record indicates that the female witness was the one who called 9-1-1 because she observed the appellant driving up and down the street and also onto power lines. Further, this witness told the police that she believed that he was acting this way because he observed her being dropped off at her residence by another male.

In March 2011, the appellant received a motor vehicle summons for failure to wear seatbelt. In September 2011, the appellant received a second motor vehicle summons for failure to wear seatbelt. In August 2014, at almost age 24, and after the September 4, 2013 closing date for the subject examination, the appellant was charged with simple assault. The appellant claims that he was assaulted twice, did not do anything to initiate any altercation or threaten anyone, and he submits a current statement from a male witness who supports his version of this incident. However, the record indicates that three female witnesses told the Police, at the time of the incident, that he threatened one of the female witnesses by stating that he was going to throw a cheesesteak at her and then when one of the males in the group approached him, he struck him in the face which caused swelling, a laceration, and eventually a trip to the hospital to get stitches. Thereafter the appellant and the other party reached an agreement in Municipal Court Mediation that they would agree to treat each other with respect in the future. Consequently, the totality of the appellant's background, which includes multiple adverse interactions with law enforcement including after the closing date, demonstrates that, at minimum, he lacks the judgment necessary for a municipal Police Officer. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver 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, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also *In re Phillips*, 117 N.J. 567 (1990). The public expects municipal Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999R) eligible list.

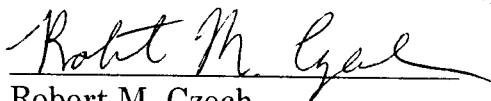
With respect to the appellant's argument that his driving records should not be considered, the appellant was removed for an Unsatisfactory Background. As such, anything in the appellant's Background Report, which he has had a chance to review and respond to on appeal, may be considered. In regard to his comments that he is being treated unfairly by the appointing authority in comparison to minority candidates, even if the appointing authority is being flexible with minor offenses on an applicant's record, like a 10-year possession of marijuana charge, this policy would not be inconsistent with the appointing authority's decision to remove the appellant in this matter since, as stated above, the appellant has multiple negative interactions with the law including after the closing date.

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 23rd DAY OF NOVEMBER, 2016



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