



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Jonathan
Fernandes, Police Officer (S9999U),
Berkeley Township

List Removal Appeal

CSC Docket No. 2018-567

ISSUED: APRIL 6, 2018

(HS)

Jonathan Fernandes appeals the removal of his name from the eligible list for Police Officer (S9999U), Berkeley Township on the basis of an unsatisfactory driving record.

The appellant, a disabled veteran, took and passed the open competitive examination for Police Officer (S9999U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 29, 2017 and expires on March 30, 2019. The appellant's name was certified to the appointing authority on April 17, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory driving record. Specifically, the appellant's driving record included driver's license suspensions from: October 4, 2013 to October 24, 2013; October 27, 2013 to November 1, 2013; and March 26, 2014 to February 13, 2017. His driving record also reflected the following violations: disregard of stop sign on September 11, 2010; unlicensed driver on May 6, 2011, October 27, 2013 and January 17, 2014; no license, registration or insurance ID in possession on April 20, 2012; and careless driving on April 20, 2012. The appointing authority noted that it was aware that the appellant's driver's license suspensions stemmed from financial struggles. During its background investigation, the appointing authority also identified several issues concerning the appellant's credit history, including a bankruptcy filing and a court order that required the appellant to pay monies owed for a past due credit card and auto loan. It also identified several issues during the appellant's tenure in high school: his failing most classes in ninth and 10th grade before quitting school in the 11th grade; several suspensions for disciplinary issues; and his missing more than 50 days in a

single school year. Finally, the appointing authority stated that the reason given by the appellant for leaving a rental property was inconsistent with the reason given by the former landlord. In support, the appointing authority submitted the appellant's five-year driver abstract and the results of a driver history inquiry, among other documents.

On appeal to the Civil Service Commission (Commission), the appellant contends that his name cannot be removed from the subject eligible list on the basis of his driving record. In this regard, he observes that the preemployment application provided that the list of automatic disqualifiers "include[d]" being convicted of driving while intoxicated two times or once within five years in any state and currently having one's driving privilege revoked or suspended in any state. The appellant notes that neither condition applies to him. He states that he has been hired by UPS as a driver and asserts that the company's driving history requirements are much stricter than the appointing authority's. The appellant also indicates that medical personnel certified that he was qualified to perform driving duties. He notes that the appointing authority acknowledged that his driver's license suspensions stemmed from financial struggles. Additionally, the appellant argues that his credit history cannot be considered a liability. In this regard, he points to his employment with UPS and his reduction of his outstanding debt. The appellant also states that he has rented from his current landlord for three years and seven months and has never missed a rent payment or had a late payment in that time period. Further, the appellant notes that his high school tenure occurred nearly two decades ago and states that he expects to earn his Associate in Science degree in criminal justice shortly with excellent grades. In addition, the appellant suggests that his disabled veteran status was the underlying discriminatory reason for his disqualification. In support, the appellant submits copies of his driver's license, a United States Department of Transportation Medical Examiners Certificate for commercial drivers and portions of the preemployment application.

In response, the appointing authority submits the documentation it submitted when it disposed of the certification.

CONCLUSION

Initially, it is noted that the appellant argues that his name cannot be removed from the subject eligible list on the basis of his driving record since his record does not fit within any of the automatic disqualifiers specifically listed in the preemployment application. However, the application provided that the list of automatic disqualifiers "include[d]" the reasons given. As such, it does not appear that the list was intended to be exhaustive. Even assuming it was, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

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 Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). *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 name from an eligible list was in error.

Although the appointing authority identified the appellant's credit history as an area of concern, the Commission notes that a candidate's negative credit history, in and of itself, is not a sufficient basis upon which to remove that candidate's name from an eligible list. See *In the Matter of Alana Farrow* (MSB, decided October 1, 2003); *In the Matter of Danielle Bonassisa* (MSB, decided August 12, 2003); and *In the Matter of Christopher Starkey* (MSB, decided July 17, 2002). Similarly, the appellant's high school tenure and recollection of the circumstances under which he left a previous rental property also do not present sufficient bases to remove his name as neither issue is material and the appointing authority does not indicate why they are problematic.

With regard to the appellant's driving record, it is noted that the parties agree that the appellant's driver's license suspensions stemmed from financial struggles. However, it cannot be ignored that the appellant's driving record also reflects several relatively recent violations with the most recent violation occurring less than three years before the examination closing date. The appellant submits that he was hired by UPS as a driver and that medical personnel found that he was qualified to perform driving duties. Nevertheless, the appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Police Officer. Driving violations evidence disregard for the motor vehicle laws and demonstrate the exercise of poor judgment. In this case, the appellant's driving record shows a pattern of disregard for the law and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a position as a municipal Police Officer. See *Joy, supra*. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence 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 the image of utmost confidence and trust. *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 municipal Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, notwithstanding the appellant's belief that the appointing authority engaged in discrimination on the basis of his disabled veteran status, his unsatisfactory driving record constitutes sufficient cause to remove his name from the subject eligible list.

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 4TH DAY OF APRIL, 2018



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