



STATE OF NEW JERSEY

In the Matter of Robert Gordillo, Fire
Fighter (M1513T), Clifton

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

CSC Docket No. 2018-857

List Removal Appeal

ISSUED: APRIL 9, 2018 (SLK)

Robert Gordillo, represented by Edwyn D. Macelus, Esq., appeals the removal of his name from the eligible list for Fire Fighter (M1513T), Clifton, on the basis of an unsatisfactory driving record, an unsatisfactory background, and falsification.

By way of background, the appellant applied to the subject examination, which had an August 31, 2015 closing date, and his name appeared on certification OL170245 that was issued to the appointing authority on March 6, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory driving record, an unsatisfactory background and he falsified his application. Specifically, the appointing authority presented that the appellant was arrested twice for Driving While Intoxicated (DWI), had a restraining order placed against him, had a complaint of domestic violence against him from a different complainant, was charged with assault on another occasion, had numerous motor vehicle and parking violations, failed to provide police reports on the aforementioned incidents and failed to disclose material facts.

On appeal, the appellant argues that the application only requested that he submit a five-year driving record. He submits his five-year Driver History Abstract, which indicates that his driving privileges were restored in 2012 and he has not incurred any traffic violations since his license was restored. The appellant argues that any search into his driving history prior to the five-year period is beyond the relevant scope. He also submits a character reference from a Paterson Fire Fighter.

In response, the appointing authority, represented by Katie Mocco, Esq., presents that the appellant's background includes numerous negative incidents, such as two DWI offenses, four driver's licenses suspensions, a forgery charge, a domestic violence charge, numerous motor vehicle violations, a simple assault charge, possession of a false government identification, and other incidents that indicate that he does not have a background suitable for a position as a Fire Fighter. Additionally, the appellant was required to list all motor vehicle related incidents on his application and he failed to list several motor vehicle violations including several license suspensions and two DWI offenses. Further, the appellant was instructed to provide copies of all police reports and the appellant failed to disclose or provide paperwork for several criminal charges where he was a defendant.

In reply, the appellant presents that the certification disposition notice listed "unsatisfactory driving record" as the sole reason for his removal. The appellant argues that it is now unjust to claim that he was also removed for having an unsatisfactory background and he falsified his application, and the appointing authority should be barred from using these additional reasons to support his removal.

In further response, the appointing authority states that it presented to the Division of Agency Services that the reasons for its removal of the appellant's name from the list were falsification, an unsatisfactory background record, and an unsatisfactory driving record. It emphasizes that the instructions on the application advised the appellant to list all motor vehicle summonses or violations ever received and he failed to list three of his four driver license suspensions and other infractions.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Civil Service Commission (Commission) to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

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.

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 appellant's background clearly provides a basis for removal from the subject list. A review of the appellant's background indicates innumerable negative incidents including acknowledgement by the appellant that his background includes two DWI offenses, possession of false identification, domestic violence incidents, physical altercations, harassment or similar incidents, criminal charges, and other incidents that are indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Fire Fighter. The public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. See *In the Matter of Nick Castello* (CSC, decided May 17, 2017) and *In the Matter of Jose Rivera, III* (CSC, decided July 13, 2017). Additionally, the appellant falsified his application by not listing all offenses, both driving¹ and non-driving related, and documentation as required. It is recognized that a Fire Fighter occupies a highly visible and sensitive position within the community and the standard for an applicant includes a good character and utmost confidence and trust. See *N.J.S.A 40A:14-9*, which provides, in pertinent part, that except as otherwise provided by law, no person shall be appointed as a member of the paid or as a paid member of a part-paid fire department and force unless he is of good moral character. The appellant's failure to and/or selectively provide information is indicative of the appellant's lack of integrity and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Fire Fighter. See *In the Matter of Scott DeCarlo* (CSC, decided October 18, 2017). With respect to the appellant's argument that only his driving history can be considered and not his overall background and falsification because the certification disposition notice did not indicate these other reasons for removal, the appellant was notified of these other grounds on appeal and had ample opportunity to respond to these additional reasons. Moreover, it is the Commission's inherent authority upon receipt of an appeal of this nature, to consider a candidate's entire record, as applicable, in determining whether he or she should be removed from a list.

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 list for Fire Fighter (M1513T), Clifton.

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.

¹ The Commission notes that the application clearly instructed the appellant to list every and all driving incidents and the mere fact that it also required the appellant to provide a driver abstract for the last five years did not negate these clear instructions. Further, the appellant understood that his entire driving history would be considered as he indicated on his application that he was found guilty of DWI offenses prior to this five-year period.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4th DAY OF APRIL, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Robert Gordillo
Edwyn D. Macelus, Esq.
Dominick Villano
Katie Mocco, Esq.
Kelly Glenn