



**STATE OF NEW JERSEY**

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

In the Matter of April Scott, Police  
Officer (S9999R), City of East Orange  
and Police Officer (S9999R),  
Township of Bloomfield

List Removal Appeals

CSC Docket Nos. 2017-1134 and  
2017-3109

**ISSUED: APRIL 10, 2018** (ABR)

April Scott appeals her removal from the eligible list for Police Officer (S9999R), City of East Orange (East Orange), on the basis of an unsatisfactory criminal background. The appellant also appeals her removal from the eligible list for Police Officer (S9999R), Bloomfield Township (Bloomfield), on the basis of an unsatisfactory criminal background. These appeals have been consolidated herein, as they address common issues.

The appellant, a non-veteran, applied for and passed the open competitive examination for Police Officer (S9999R), which had a closing date of September 4, 2013. The subject eligible list promulgated on May 2, 2014 and expired on March 22, 2017.

The appellant's name was certified to East Orange on February 2, 2016 (OL160095) and to Bloomfield on April 27, 2016 (OL160513). In disposing of the February 2, 2016 certification (OL160095), East Orange requested the removal of the appellant's name due to an unsatisfactory criminal background, unsatisfactory driving record, and a negative credit history. In support, East Orange submitted a background report detailing November 19, 2003 and May 8, 2006 arrests; three Temporary Restraining Orders (TROs) filed against the appellant in 2011; responses to calls at the appellant's residence by the Bloomfield Police Department; her financial history; and her involvement in seven motor vehicle accidents. In disposing of the April 27, 2016 certification (OL160513), Bloomfield requested the appellant's removal on the basis of an unsatisfactory criminal record. In support, Bloomfield submitted a New Jersey State Police (State Police) Fingerprint

Identification System Automated Applicant Record dated August 19, 2015, which only detailed the appellant's November 19, 2003 arrest.

With regard to the appellant's criminal background, both East Orange and Bloomfield asserted that the appellant was arrested at age 22 on November 19, 2003 and charged with two offenses under the New Jersey Code of Criminal Justice, which were diverted through the Pre-Trial Intervention (PTI) Program in July 2004. The charges from that incident were ultimately dismissed on August 12, 2005 and the records from that arrest were expunged in March 2009.<sup>1</sup> East Orange also indicated that in May 2006, the appellant, then aged 25, was charged with simple assault, in violation of *N.J.S.A. 2C:12-1A* and endangering the welfare of children, in violation of *N.J.S.A. 2C:24-4A*. East Orange submitted that on July 9, 2007, the appellant pled guilty to the simple assault charge and was sentenced to time served and assessed a \$45.00 fine.

On appeal to the Civil Service Commission (Commission), the appellant acknowledges that she was criminally charged following a November 2003 incident, but she contends that she should be restored to the subject eligible list, as the only conviction in her record is the January 2006 simple assault charge, a disorderly persons offense, and because she has significantly rehabilitated herself since the time of her 2007 conviction for that offense. The appellant argues that a proper review of the circumstances surrounding the underlying May 2006 offense "could have changed the outcome." In the instant matter, the appellant does not describe the nature of the November 2003 or May 2006 incidents because of a stated desire to avoid making details about her children's involvement in those incidents public. However, she maintains that she pled guilty to simple assault in 2007 in order to get her children back from the Department of Children and Families (DCF) after it informed her that in March 2007 there had been an incident in the resource home where one of her children was residing. The appellant submits a letter from DCF, dated April 25, 2007, regarding the investigation of that incident. Moreover, the appellant argues that there is significant evidence of her rehabilitation since the May 2006 incident. Specifically, she cites her attainment of a Bachelor's degree from New Jersey City University in 2009 and completion of a number of programs, including anger management, individual therapy, and parenting courses, as evidence of her rehabilitation. Furthermore, she contends that her employment as a Juvenile Detention Officer at the Essex County Juvenile Detention Center from June 2010 to May 2011<sup>2</sup> demonstrates her suitability for the subject title, given that the "facility employed [her] knowing [her] full background history." Moreover, she

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<sup>1</sup> On appeal, the appellant submits a copy of an Order of Expungement issued by the Monmouth County Superior Court dated March 20, 2009, which ordered the expungement of the records connected to her November 19, 2003 arrest.

<sup>2</sup> In *In the Matter of April Scott* (CSC, decided April 18, 2012), the Commission approved a settlement wherein the appellant resigned in good standing from her position of Juvenile Detention Officer, effective May 12, 2011, in lieu of removal.

submits that she has served as a Family Service Worker with the Essex County Department of Citizen Services since November 2012 without any disciplinary issues.

In response, East Orange, represented by Michael D'Aquanni, Esq., and Bloomfield contend that the appellant's criminal background supports the removal of the appellant's name from the subject eligible list. Specifically, East Orange notes that the appellant acknowledged in her preemployment application that she had been arrested, convicted of a crime, placed on probation, fined, had to post bail, had been the subject of a criminal complaint, and was investigated for child abuse or neglect. It stresses that municipal Police Officers are held to a higher standard of conduct than ordinary employees and it maintains that the appellant does not meet those standards. East Orange and Bloomfield argue that the appellant's criminal history includes a 2003 arrest which culminated in "convictions" for two criminal offenses and a 2006 arrest that resulted in "convictions" for endangering the welfare of a child and simple assault. Bloomfield maintains that it considered the expungement of her 2003 arrest when considering her for appointment, but nevertheless determined that she was not a good candidate for the Police Officer position she sought. In support, East Orange submits copies of a State Police Fingerprint Identification System Automated Applicant Record detailing the appellant's arrest history; a Computerized Criminal History (CCH) record from the State Police dated August 11, 2008 which details the appellant's arrest history; a July 9, 2007 Judgment of Conviction from the Monmouth County Superior Court for the May 2006 simple assault charge; and a July 9, 2007 Order of Dismissal for the May 2006 charge of endangering the welfare of children.

In reply, the appellant argues that East Orange and Bloomfield mischaracterize her criminal record. In this regard, she maintains that her only conviction was for simple assault based upon the above-noted May 2006 incident. She asserts that the November 2003 charges were dismissed following her completion of PTI and were subsequently expunged. She also argues that East Orange and Bloomfield failed to adequately consider the circumstances of the underlying arrest behind the 2003 charges. Moreover, she contends that East Orange's and Bloomfield's factual errors regarding her criminal history supports her restoration to the subject eligible list. She contends that an appropriate consideration of her criminal history pursuant to *N.J.A.C. 4A:4-4.7* would not support her removal on that basis, as the nature of the underlying incidents were isolated events that were not serious, her age of 22 at the time of the 2003 incident and 25 at the time of the 2006 incident, the 11 years that have elapsed since the most recent charges and the evidence of her rehabilitation since the last incident all support her restoration to the subject eligible list. The appellant submits that the significant evidence of her rehabilitation includes her completion of a Bachelor's degree, trade school program, parenting programs, domestic violence victim counseling, and anger management program, as well as her employment in the

titles of Juvenile Detention Officer and Family Service Worker with Essex County. As to her removal by Bloomfield, the appellant argues that Bloomfield's submissions in this matter demonstrate the flaws in its background report, particularly its statement that she was "convicted" of the charges stemming from the November 2003 incident. In that regard, she notes that she was not convicted following that incident. Rather, her participation in PTI led to the dismissal of the underlying charges in July 2004.

In response to the instant appeal, both East Orange and Bloomfield argue that the appellant's removal from the subject eligible list is also warranted based upon her driving record. In that regard, both East Orange and Bloomfield cite her Driver's Abstract, which shows that she was involved in seven motor vehicle accidents between 2004 and 2014. They contend that such a history falls short of the conduct expected of a municipal Police Officer. Bloomfield also argues that the appellant's pattern of summonses for driving violations supports her removal from the subject eligible lists. Specifically, it notes that the appellant was issued summonses for unsafe operation of a motor vehicle in 2000, 2002 and 2007; careless driving in 2006 and 2007; speeding in 2004; driving while on her cell phone in 2009; and failing to obey traffic control devices in 2009 and 2014.

East Orange also argues that the appellant has an unsatisfactory background which supports her removal from the subject eligible list. In that regard, East Orange presents that the appellant was the defendant in requests for TROs issued against her by the Superior Court, Chancery Division, Family Part, Essex County in February 2011, March 2011 and April 2011. Additionally, it notes that the Bloomfield Police Department responded to multiple landlord-tenant disputes involving the appellant, as well as disputes with her children's babysitter. It submits copies of various incident reports from nine police calls to the appellant's residence between April 2011 and March 2016. Finally, East Orange argues that the appellant's 2006 bankruptcy and her outstanding debt as of June 2016 support its request to remove her from the subject eligible list. It submits an October 13, 2006 Order from the United States Bankruptcy Court, District of New Jersey, which discharged a portion of the appellant's debts pursuant to Chapter 7 of the United States Bankruptcy Code.

Concerning her driving record, the appellant emphasizes that she was not cited following any of the accidents noted in her Driver's Abstract. In support, she submits copies of accident reports dated March 21, 2005, July 27, 2010 and February 14, 2014. The March 2005 accident report states that she was in the process of making a right turn when she was involved in a collision with another vehicle. The July 2010 accident report indicates that she hit a bicyclist who failed to stop at a stop sign at an intersection. The accident report states that the bicyclist fled the scene after being hit. The February 2014 accident report indicates that the appellant was sideswiped by another vehicle and the other driver fled the accident

scene. She argues that Bloomfield has not provided adequate documentation to support her removal from the subject eligible list based upon her driving record, particularly since it did not remove her on that basis when disposing of the July 12, 2015 certification (OL150912).<sup>3</sup>

The appellant contends that East Orange's observation that she was a defendant on three TROs is misleading, as all three TROs were dismissed and had come from the same accuser, a woman that she had previously employed to babysit her children. Moreover, she maintains that East Orange failed to acknowledge that she was a victim of domestic violence and had secured a Final Restraining Order against the father of her children on January 19, 2006. She also contends that there is documented evidence of individuals systematically using the courts to file false restraining orders. In support, she submits an article from that describes a former Newark police officer's alleged use of restraining orders against former girlfriends as a means of retaliating against them. The appellant argues that East Orange cannot rely on the police calls to her residence as evidence of her unsatisfactory background, as the Investigation Reports of these incidents demonstrate that she was only involved as a complainant or a witness, and not as a suspect accused of wrongdoing.

The appellant counters that her credit history does not support her removal from the subject eligible list. She argues that her 2006 bankruptcy is too remote in time to be considered relevant, as 10 years elapsed between that event and the subject certification to East Orange and that bankruptcy no longer appears in her credit report. Moreover, the appellant submits that the majority of her debt amount is attributable to her student loans. As such, it should not preclude her employment. The appellant submits a copy of TransUnion credit report dated September 5, 2017 in support of her contentions regarding her financial history.

## 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 eligible 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.

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<sup>3</sup> In disposing of the July 12, 2015 certification, Bloomfield bypassed the appellant, who was listed in the 33<sup>rd</sup> position. The appellant did not appeal her bypass on that certification.

The presentation to an appointing authority of a pardon or expungement prohibits an appointing authority from rejecting an eligible based on such criminal conviction, 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. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A. 11A:4-11*. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). The Appellate Division has held that when candidates for law enforcement titles, including the title of Police Officer, present an expungement, the foundation for that expungement is treated as "[t]he equivalent of 'evidence of rehabilitation' in these circumstances." See *In re J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006). *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.

*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.

Finally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that an eligible was involved in such activity may reflect upon the eligible's character and ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here, as the appellant was convicted of simple assault, a disorderly persons offense, that offense did not rise to the level of a crime. Nevertheless, the appellant's arrests could still be considered in light of the factors noted in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine whether they adversely related to the employment sought.

In the instant matter, the totality of the circumstances supports East Orange's and Bloomfield's removal of the appellant from the subject eligible list. The appellant's background includes a 2003 arrest, the record of which was expunged in 2009, and a 2006 conviction for simple assault. However, as noted

above, an expungement will not serve to automatically prevent an appointing authority from requesting the removal of an individual seeking a municipal Police Officer position. In applying the factors set forth in *N.J.A.C. 4A:4-4.7(a)4*, the fact the appellant attained a Bachelor's degree; completed a trade school and assorted programs; and has been employed in the title of Family Service Worker since 2012 are factors that mitigate in her favor. On the other hand, the Commission notes that the appellant has a 2006 conviction for simple assault in her record, which cannot be considered an isolated incident, as the underlying charges were similar to the charges which followed her 2003 arrest. Additionally, it is recognized that the appellant was an adult when both incidents occurred, being 22 years old at the time of her 2003 arrest and 25 years old at the time of her 2006 arrest. Moreover, the appellant's employment record also includes a May 2011 resignation in good standing, in lieu of removal, from the title of Juvenile Detention Officer. Furthermore, her record includes three TROs filed against her by her children's former babysitter in 2011, which were eventually dismissed. Finally, the 2006 arrest occurred within seven years of the closing date and the expungement of the 2003 arrest occurred less than four years prior to the closing date for the subject examination.

The appellant's driving record, particularly when viewed in concert with her other background issues, adds further support for the removal of the appellant's name from the subject eligible list by both East Orange and Bloomfield. Specifically, the nine violations shown in her driver's abstract, including a post-closing date summons for failing to obey a traffic control device in December 2014, raise further questions about her suitability for a law enforcement position. In that 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 an image of the utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. Her primary duty is to enforce and uphold the law. She carries a service revolver on her person and is constantly called upon to exercise tact, restraint and good judgment in her relationship with the public. She 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). Clearly, the appellant's background, including two arrests, a simple assault conviction, a mixed public employment record, multiple TROs and a significant pattern of driving infractions, reflects poorly upon her ability to enforce and promote adherence to the law. Accordingly, given the totality of the circumstances, both East Orange and Bloomfield have presented sufficient cause to remove the appellant's name from the Police Officer (S9999R) eligible list. It is therefore unnecessary to address the appellant's negative credit history.

**ORDER**

Therefore, it is ordered that these appeals 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 4<sup>TH</sup> DAY OF APRIL, 2018

*Deirdre L. Webster Cobb*

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: April Scott  
Solomon Steplight  
Michael D'Aquanni, Esq.  
Matthew Watkins  
Kelly Glenn  
Records Center