



STATE OF NEW JERSEY

In the Matters of Yanzan Abaza and
Nicholas Saliba, County Correction
Officer (S9999U), Passaic County
Sheriff's Office

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2019-2634 and
2019-2630

Reconsideration

ISSUED: JUNE 28, 2019 (SLK)

The Passaic County Sheriff's Office's requests reconsideration of *In the Matters of Yanzan Abaza and Nicholas Saliba* (CSC, decided February 6, 2019), where the Civil Service Commission (Commission) restored Yanzan Abaza's and Nicholas Saliba's names to the eligible list for County Correction Officer (S9999U), Passaic County Sheriff's Office. These appeals have been consolidated due to common issues presented.

By way of background, the appointing authority removed the appellants' names from the County Correction Officer (S9999U), Passaic County Sheriff's Office list due to unsatisfactory driving records. In *Abaza and Saliba, supra*, the Commission found that although the appellants previously had unsatisfactory driving records, they demonstrated sufficient rehabilitation. The Commission also noted that the appointing authority did not respond to the appeals to dispute their claims that they were sufficiently rehabilitated.

On reconsideration, the appointing authority initially states that it did not receive notice concerning the appellants' appeals. It explains that if it had received notice, it would have responded. Concerning Abaza, the appointing authority indicates that he falsified his application. Specifically, it presents that he failed to list employment with United Parcel Service (2007) and Planet Trading (2009-2011), failed to disclose ordinance complaints that he received for extremely loud noise (2008), loud music (2008) and vehicle false alarm (2009), failed to disclose

employment dates which were on his social security work transcript for Saks (2006), Shoprite (2004-2005) and Planned Building Services (2006-2007), failed to disclose an arrest for resisting arrest (2009), failed to disclose that he was investigated by the Paterson Police Department and was subsequently arrested and charged with receiving stolen property and resisting arrest, failed to disclose nine motor vehicle summonses between 2006 and 2013 and failed to disclose a motor vehicle accident (2016). Additionally, the appointing authority argues that Abaza has an unsatisfactory criminal record based on the receiving stolen property charge.

With respect to Saliba, the appointing authority indicates that he also falsified his application. Specifically, he failed to disclose 22 non-real estate debts (\$97,842) and one real estate debt (\$278,560) for total debts in the amount of \$374,402, failed to disclose 19 motor vehicle summonses between 1999 and 2013, failed to disclose his current or past ownership in five vehicles (1998 Honda UCD, 2003 Yamaha, 2003 LOA, 2013 Kawasaki and a 2012 Yamaha). Additionally, it argues that Saliba has an unsatisfactory employment record as he was terminated from Best Buy because he was coming in late due to his college schedule. Finally, the appointing authority contends that Saliba has an unsatisfactory criminal history based on 2003 and 2006 traffic tickets where there was a bench warrant issued and he paid the tickets and a 2006 retail theft charge where he pled guilty and paid a fine.

In response, Abaza acknowledges that he failed to disclose his employment with United Parcel Service. He explains that he did disclose his employment with Planet Trading on his application as that company is recognized as Planet Kids, which he disclosed. With respect to his other employers, he states that he did not disclose the dates of employments with these companies as he could not remember them as his employment with them took place many years ago. Further, he indicates that he was unaware that his social security work transcript contained employment dates and it looked like it only had internal codes. Abaza explains that in response to a question asking if he was "ever arrested for or charged with a violation of the disorderly person's act, or cited any ordinance?" he interpreted that question as having been arrested, taken into custody, or charged with a violation which would result in being detained. With respect to the question asking if he had ever been arrested, indicted or convicted for any violation of criminal law, it was his understanding that the resisting arrest charge was dropped and he provided the document showing that he completed a diversionary program for the receiving stolen property charge. Regarding the question asking if he had ever been held as a suspicious person or investigated by law enforcement, he interpreted that question as meaning someone who had been investigated, but found not-guilty. Since he had indicated that he was found guilty of receiving stolen property, he did not think the question applied. Abaza indicates that he presented all motor vehicle violations that were on his motor vehicle abstract and believes that he should not be held responsible for any violations that were not on his abstract. Similarly, he did not include his July 6, 2016 motor vehicle accident as it was not on his August 15, 2016 abstract.

Saliba indicates that he was initially removed for an unsatisfactory driving record and questions why the appointing authority is submitting documentation for additional reasons for his removal only after he was successful in his initial appeal. Regarding the falsifications allegations, he explains that he misread the question concerning his debts and indicates that he submitted his credit reports which show the debts, he indicates he listed every motor vehicle violation that he could remember, his last motor vehicle violation was in 2009 and every motor vehicle violation that the appointing authority indicates is not on his driver's abstract, he listed every motor vehicle that he owned that he could remember and he did not think a jet ski trailer was a vehicle, and he acknowledges that he did receive a failure to exhibit documentation violation in 2013 and explains that this was due to not having vehicle paperwork in his possession. Concerning his employment record, Saliba states that 16 years ago, when he was 20 years old, he was a full-time college student and was terminated for tardiness as he was overwhelmed trying to be a full-time student and hold a full-time job. With respect to the allegation that he has an unsatisfactory criminal record, he acknowledges that he received a citation for retail theft 13 years ago, which involved a dispute and an exchange of a \$24 item. He notes that he paid a fine, the matter was expunged from his record, and the incident was not considered a disorderly person's offense nor a crime. Saliba highlights that he has matured as evidenced by his two college degrees and his current employment as a State Correctional Police Officer. Additionally, he lives in a home that he owns with his wife and child and has no recent negative interactions with the law.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

Initially, the Commission shall accept the appointing authority's explanation as to why it did not initially respond to these appeals and it shall consider its submissions on reconsideration.

With respect to merits of these matters, the appointing authority has not met the standard for reconsideration. A review of the record indicates that the appointing authority only indicated to this agency when it originally returned the certification that the appellants had unsatisfactory driving records. On reconsideration, the appointing authority is not arguing that the Commission made a clear material error in determining that the appellants' driving histories have been rehabilitated or that it has new information that was not previously available, which demonstrates that the appellants have unsatisfactory driving backgrounds. Instead, it is presenting new allegations concerning falsification and unsatisfactory employment and criminal

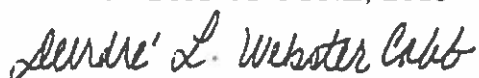
backgrounds. See *N.J.A.C. 4A:4-4.7(a)* and *N.J.A.C. 4A:4-6.1(a)6* and (a)7. However, reconsideration is only appropriate where a clear material error or new information that was not available at the time of the appeal that is material is presented. It is not to afford an appointing authority a “second bite of the apple” after it loses an appeal. In other words, if the appointing authority believed that the appellants falsified their applications and had unsatisfactory criminal or employment backgrounds, it needed to indicate this at the time it submitted its background report when it returned the certification to this agency. Similarly, even if the appointing authority had responded to the initial appeal, it could not bring up new grounds for removal that were not initially presented at the time it submitted its background report to this agency. Moreover, the alleged falsifications and unsatisfactory criminal and employment backgrounds involve omissions and incidents that were either not recent, minor or sufficiently explained by the appellants. Therefore, even if these allegations were to be evaluated, they are not persuasive evidence that the appellants should be removed from the list as the passage of time indicates that the appellants’ backgrounds have been sufficiently rehabilitated.

ORDER

Therefore, it is ordered that reconsideration 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 26th DAY OF JUNE, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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c: Yanzan Abaza 2019-2634
Nicholas Saliba 2019-2630
Richard H. Berdnik, Sheriff
Detective Captain Thomas Adamo
Kelly Glenn

Attachment



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Sheriff's Office

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2019-1009 and
2019-966

List Removal Appeal

ISSUED: February 8, 2019 (SLK)

Yanzan Abaza and Nicholas Saliba appeal their removals from the eligible list for County Correction Officer (S9999U), Passaic County Sheriff's Office on the basis that they possessed unsatisfactory driving records. These appeals have been consolidated due to common issues presented.

The appellants took the open competitive examination for County Correction Officer (S9999U), achieved a passing score, and were ranked on the subsequent eligible list. In seeking their removal, the appointing authority indicated that the appellants possessed an unsatisfactory driving history. Specifically, its background report for Abaza indicated that he had numerous motor vehicle violations, including speeding, careless driving, unsafe operation of a motor vehicle, failure to wear seatbelt, failure to exhibit documents, improper display/fictitious plates, maintenance of lamps, and improper muffler. Additionally, his driver's license was previously suspended and he was involved in four accidents. A review of his certified driver's abstract indicated that he was last involved in an accident in July 2016 and his last motor vehicle violation was for not being in possession of a license, registration or insurance identification in April 2012.

Concerning Saliba, its background report indicated that he had numerous motor vehicle violations including speeding, careless driving, reckless driving, operating while suspended, unsafe operation of a motor vehicle, failure to give proper signal, failure to wear seatbelt, failure to yield to emergency vehicles, improper

plates/fictitious plates, wrong way on a one-way street, and illegal backing/turning in street. Additionally, his license was suspended from April 2001 to October 2006 and December 2008 to January 2009. Saliba's certified driver abstract indicates that his last violation was for abandoning a vehicle on private property in November 2010.

On appeal, Abaza presents that his last moving violation was over 10 years ago in August 2008. He asserts he has now matured as demonstrated by the fact that he does not have any recent moving violations. Abaza states that any subsequent violations involved the maintenance of his car and he believes that such violations should not be held against him as they were a function of him trying to save enough money to get repair work done. Additionally, he presents that he was employed as a United States Postal Carrier and contends he would not have been hired in this position if he had an unsatisfactory driving history.

Saliba acknowledges that his past driving history was unsatisfactory. He explains that he was young and immature at that time, but contends that he has demonstrated sufficient rehabilitation based on his not receiving any moving violations in the past 10 years, his two college degrees, his home ownership, his marriage and son, and his not having any other negative interactions with the law.

Although given the opportunity, the appointing authority has not submitted responses to these appeals.

CONCLUSION

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 Civil Service Commission (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. The Commission has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle violations 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 or her name from an eligible list was in error.

In these matters, although the appellants previously had unsatisfactory driving records, they have demonstrated sufficient rehabilitation. Specifically, Abaza's certified driver's abstract indicates that his last motor vehicle violation was in April 2012 which is over four years prior to the August 31, 2016 closing date of the examination and Saliba's last motor vehicle violation was in November 2010, nearly six years prior to the closing date. Additionally, the appellants both argue that they have matured and, although given the opportunity, the appointing authority did not respond to the appeals, so there is no evidence to contradict these assertions. Finally, as the appointing authority has not been presented any evidence that Abaza's most recent accident was his fault, it shall not be held against him.

Accordingly, the appellants have met their burdens of proof in these matters and the appointing authority has not shown sufficient cause for removing their names from the County Correction Officer (S9999U), Passaic County Sheriff's Office eligible list.

ORDER

Therefore, it is ordered that these appeals be granted, and Yanzan Abaza's and Nicholas Saliba's names be restored to the (S9999U) eligible list, for prospective employment 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 6th DAY OF FEBRUARY, 2019

Deirdre' L. Webster Cobb

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Chairperson
Civil Service Commission

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