

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

List Removal Appeal

ISSUED: October 12, 2017 (CSM)

Wykell Brooks appeals the removal of his name from the Police Officer (S9999R), Elizabeth eligible list on the basis of an unsatisfactory background report.

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By way of background, the appellant took the open competitive Law Enforcement Examination (LEE) (S9999R), achieved a passing score, and his name appeared on the resultant eligible list. It is noted that the subject list expired on March 22, 2017. In disposing of the October 11, 2016 certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory background report. Specifically, the appointing authority indicated that the appellant was arrested on October 13, 2004 for hindering apprehension, but the charges were dismissed. It also indicated that he was arrested in Elizabeth on July 16, 2008 for disorderly conduct and received a fine, and was arrested on June 10, 2012 for simple assault and on April 18, 2016 for aggravated assault, but those charges were dismissed. The background report also indicated that the appellant received a driving ticket on August 16, 2013 for driving while suspended, a ticket on August 23, 2014 for failure to wear a seatbelt, a ticket for speeding on March 16, 2016 and that his driving privileges were suspended on February 26, 2015 for child support, but the fee was paid. The appointing authority also stated that the appellant was absent for 124 days while in high school, was late seven times while working for Elizabeth, and had been out of work for over one year due to a work related injury.

On appeal to the Civil Service Commission (Commission), the appellant states that he does not have a criminal record. Rather, he explains that on the first day of orientation, the class was asked if anyone was arrested and what the charges

In the Matter of Wykell Brooks, Police Officer (S9999R), Elizabeth CSC Docket No. 2017-3133 were. The appellant states that several individuals responded yes, stated their offenses, but were permitted to continue with the employment process. However, he was notified that he would not be continuing in the process and questions the exact issue in his background report that barred him from the position.

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.

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 removal of 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).

Although the appellant's arrest and conviction were for a disorderly persons offense and cannot give rise to the disability arising under N.J.A.C. 4A:4-4.7(a)4, the fact that the appellant was involved in such activity reflects upon his character and his 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). In the matter at hand, the record establishes that the appellant had four adverse encounters with law enforcement between 2004 and 2015 and the appointing authority indicates that he received three driving tickets between 2013 and 2016 and that his license was suspended once for child support in 2015. Indeed, his last arrest occurred on April 18, 2015, and his driving infractions occurred during the life of the subject list. While the he argues that other unnamed applicants were permitted to continue with the employment process even though they indicated

criminal offenses, the appellant's multiple arrests and recent violations of motor vehicle laws are indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Police Officer. In this regard, the Commission notes that Police Officers hold highly visible and sensitive positions within the community, and the standard for an applicant includes good character and an 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). The public expects Police Officers to present a personal background that exhibits respect for the law and the rules.

With respect to his work record and school attendance records, it is not necessary to address these issues since the Commission has upheld the removal of his name on other grounds. Additionally, the subject list has expired and the appointing authority did not make any appointments of lower ranked eligibles on the list. Accordingly, given the totality of the circumstances, the appointing authority has presented sufficient cause to remove the appellant's name from the Police Officer (S9999R), Elizabeth 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 OCTOBER, 2017

Robert M. Czech, Chairperson Civil Service Commission

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