



STATE OF NEW JERSEY

In the Matter of Jesus M. Gaud,
Fire Fighter (M1545T), Town of
Kearny

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-2351

List Removal Appeal

ISSUED: AUG 18 2017 (JET)

Jesus M. Gaud appeals the removal of his name from the Fire Fighter (M1545T), Town of Kearny, eligible list on the basis of an unsatisfactory background report and falsification.

The appellant took the open competitive examination for Fire Fighter (M1545T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 25, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory background report and falsification of his employment application. Specifically, the appointing authority asserted that the appellant was charged in California on November 19, 2005 with Domestic Battery of his Spouse and with Damage to a Wireless Communication Device. The appointing authority also indicated that the appellant was charged on December 2, 2005 with a Disturbing the Peace misdemeanor in violation of San Diego Code 415(1). It is noted that an FBI criminal background check confirms that the appellant was charged on November 19, 2005 with Domestic Battery of his Spouse and with Damage to a Wireless Communication Device, and charged on December 2, 2005 with Disturbing the Peace.

On appeal to the Civil Service Commission (Commission), the appellant asserts that, regarding the 2005 domestic violence charges, he contacted the court in San Diego and was instructed to file a petition for dismissal. The appellant explains that he submitted the petition for expungement and was notified on January 12, 2017 that it was granted on September 23, 2016. Further, the

appellant states that he was required to list the domestic violence charge on the employment application prior to the date that it was expunged. The appellant maintains that he accurately listed on the application that he was charged with Disturbing the Peace on December 2, 2005, which included \$1,000 bail and three years of probation with eligibility for expungement.

In response, the appointing authority, represented by Arthur R. Thibault, Jr., Esq., maintains that the appellant's name should be removed from the eligible list. Specifically, the appointing authority contends that the appellant only listed on the employment application that he was charged with Disturbing the Peace on December 2, 2005, for which he pled guilty and was sentenced to three years of probation and anger management classes. Further, the appointing authority states that he failed to disclose the domestic violence charge and that such information is required on the employment application. The appointing authority avers that the employment application notifies employees that their names will be removed as a result of any omission, falsification or misstatement of fact. The appointing authority adds that, in a separate memorandum submitted with his application, the appellant only provided a limited explanation pertaining to his involvement with the December 2, 2005 incident of domestic violence. In addition, in the military record memorandum submitted with his employment application, the appellant claimed that various marital difficulties resulted in his military discharge from the Navy in February 2006. In this regard, the appellant asserted that his wife was only 14 years old at the time and his deteriorating relationship with her resulted in his military discharge. Moreover, the appointing authority contends that the appellant does not explain his involvement with the November 19, 2005 charges in his letter of appeal. As such, the appointing authority maintains that the appellant's name should be removed for falsification of the employment application and as a result of an unsatisfactory background.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C. 4A:4-4.7(a)(4)*, provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *N.J.S.A. 11A:4-10* and *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)(4)* to determine whether the appellant's criminal history adversely relate to the position of Fire Fighter. 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.

Further, the presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commission. However, in *In the Matter of J.B.*, 386 N.J. Super. 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal to the former Merit System Board (Board) for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement."

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 Commission to remove an individual from an eligible 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 for the removal 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 an appointment.

In the instant matter, the appellant argues that his name should be restored to the eligible list. Additionally, he states, among other things, that he filed for an expungement for the charges against him which was granted. Initially, the appellant provides no substantive evidence in support of his claim to show that the charges against him were expunged. Regardless, the appellant admitted in this matter that the charges were not expunged until after he submitted the employment application to the appointing authority. Even if the charges were expunged, as noted in the above rules, the appointing authority was free to review the appellant's criminal background. Additionally, other than the expungement, the appellant has provided no substantive evidence of rehabilitation in this matter. It is also noted that the appellant was an adult at the time of his arrests. Further, the appellant does not adequately explain his involvement with the charges, and he does not dispute the charges or provide any information to refute the appointing authority's arguments. Moreover, the nature of the charges clearly adversely relate to the title of Fire Fighter. A Fire Fighter operates in the context of a paramilitary organization in which the ability to follow orders is crucial to saving lives. The appellant's adverse background report and criminal record are inimical to that goal.

Moreover, the appellant's arrests and his failure to disclose the November 2005 charges against him on the employment application reflect negatively on his ability to function as a Fire Fighter and suggest disdain for the laws of the State and the safety of its citizens. *See Naro v. Trenton Department of Public Safety*, 92 N.J.A.R. 2d (CSV) 211 (1992). Additionally, the New Jersey Supreme Court has stated:

Firefighters are not only entrusted with the duty to fight fires: they must also be able to work with the general public and other municipal employees, especially police officers, because the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship places at risk the citizens of the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police department at a fire. *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998).

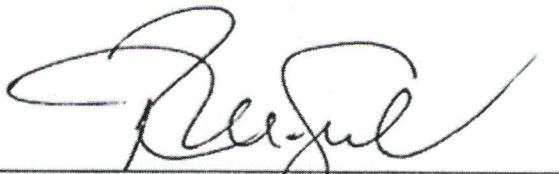
Given the position at issue and in consideration of the totality of the evidence in the record, the appointing authority has presented a sufficient basis to remove the appellant's name from the eligible list for Fire Fighter (M1545T). Since the appellant's unsatisfactory background provides a sufficient basis for his removal from the list, the issue of his falsification of the employment application need not be addressed.

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 16th DAY OF AUGUST, 2017

A handwritten signature in dark ink, appearing to read 'R. Czedh', is written over a horizontal line.

Robert M. Czedh, Chairperson
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