



STATE OF NEW JERSEY

In the Matter of James Ward,
Correctional Police Officer, Juvenile
Justice Commission (S9999U),
Juvenile Justice Commission and
Fire Fighter (M1585T), Woodbridge
Fire District 2

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

List Removal Appeal

CSC Docket Nos. 2019-388 and 2019-
591

ISSUED: DECEMBER 21, 2018 (SLK)

James Ward appeals his removals from the eligible lists for Correctional Police Officer, Juvenile Justice Commission (S9999U)¹, Juvenile Justice Commission (JJC), on the basis of falsification and Fire Fighter (M1585T), Woodbridge Fire District 2 (Fire District) on the basis of an unsatisfactory employment record. These appeals have been consolidated due to common issues presented.

By way of background, the appellant's name appeared on certification OS170539 that was issued to the JJC on August 16, 2017. In disposing of the certification, the JJC requested the removal of the appellant's name, contending that he falsified his application. Specifically, the JJC's background report indicated that he did list that he was charged with Receiving Stolen Property in 2002 and Harassment in 2013. It stated that the appellant also failed to list that he was employed by the Avenel Fire Company (Avenel Fire) in Woodbridge and then subsequently fired in 2012 for Abuse of Authority. Additionally, the appellant's name appeared on certification OL180553 that was issued to the Fire District on June 1, 2018. In disposing of the certification, the Fire District requested the removal of the appellant's name, contending that he had an unsatisfactory employment record. Specifically, its background report indicated that he was separated from Avenel Fire due to an incident in 2012 where he had an interaction with a driver on a public road

¹ At the time of the certification, this title was known as Correction Officer Recruit, Juvenile Justice Commission. However, this title is now known as Correctional Police Officer, Juvenile Justice Commission.

and then had a verbal exchange at the firehouse with the driver where the appellant gestured obscenely to the driver and shouted a statement which may have included an expletive ("road rage" incident). Further, the Fire District presents that the appellant was insubordinate to the Fire Chief by failing to accept a 30-day suspension and he self-imposed a longer one. The Fire District indicates that the appellant is no longer a member of Avenel Fire. The Fire District also presents that the appellant pled guilty to a Receiving a Stolen Property charge in 2002, his driver's license was suspended in 2002 and 2007, and his driver's abstract revealed 17 motor vehicle violations between 2000 and 2012.

On appeal, concerning the OS170539 certification, the appellant asserts that he was not fired from Avenel Fire as he was a volunteer Fire Fighter and not an employee. He acknowledges that he was suspended by the Fire Chief for conduct unbecoming a member due to a verbal altercation that took place while he was responding to a call. The appellant presents that he has been involved in a long legal battle with Avenel Fire as he states that he was separated without going through the proper procedures due to a personal vendetta that a few members of the Board of Commissioners had against him. Therefore, the appellant argues that since he was a volunteer and not an employee, he did not falsify his application when he did not list this position on his application in response to a question that only asked him about his employment history.

In reply, the JJC relies upon its background report as described above to support its position that the appellant falsified his application. The Fire District argues that the appellant's 2002 Receiving Stolen Property charge indicates that he has an unsatisfactory criminal record, that the appellant falsified his application by omitting his service and suspension from Avenel Fire, and that he has an unsatisfactory driving record based on the "road rage" incident that led to his suspension from Avenel Fire, his driver's license being suspended twice, and his 17 motor vehicle violations. In summary, the Fire District argues that the appellant's background is adverse to the duties and responsibilities of a Fire Fighter.

Although given the opportunity, the appellant did not respond to the Fire District.

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)7*, allows the Commission to remove an eligible's name from an employment list when he or she has a prior employment history which related adversely to the title.

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.

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, 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).

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. 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). Similarly, the Commission has the authority to remove candidates from lists for Fire Fighter based on their driving records where driving is an essential duty and the appellant has the burden to provide that a driver's license is not essential to the position. *See In the Matter of William Bryant, Jr.* (MSB, decided July 25, 2000) and *In the Matter of Paul Newman* (CSC, decided November 21, 2018).

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 this matter, the appointing authorities had valid reasons for removing the appellant's name from the subject lists. Specifically, the appellant's background includes a 2002 Receiving Stolen Property charge, 17 motor vehicle violations between 2000 and 2012, driver's license suspensions in 2002 and 2007, a suspension from his position as a volunteer Fire Fighter from Avenel Fire due to allegations that concern a "road rage" incident and insubordination in May 2012, and a 2013 Harassment charge. At minimum, the appellant's consistent negative interactions with the law, the public, and his superiors demonstrate that he does not have the judgment to be a public safety employee. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officers, like 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 utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. Similarly, the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. *See In the Matter of Jose Rivera, III* (CSC, decided July 13, 2017). Further, his multiple adverse contacts with the law and others is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Fire Fighter. *See In the Matter of Nick Castello* (CSC, decided May 17, 2017). In this regard, firefighters are not only entrusted with the duty to fight fire; 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 departments at a fire. *See Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998). Taken together, the factors presented above are clearly sufficient for removal as the entirety of the appellant's background is unsatisfactory for a position as a public safety employee.


Accordingly, the appellant has not met his burden of proof in these matters and the JJC and the Fire District have shown sufficient cause for removing his name from the Correctional Police Officer, Juvenile Justice Commission (S9999U), and Fire Fighter (M1585T) eligible lists.

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 19th DAY OF DECEMBER, 2018



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