



STATE OF NEW JERSEY

In the Matter of Paul Caldwell, Fire
Fighter (M1516T), East Orange

CSC Docket No. 2018-2674

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

List Removal Appeal

ISSUED: JULY 20, 2018 (SLK)

Paul Caldwell appeals his removal from the eligible list for Fire Fighter (M1516T), East Orange on the basis that he possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Fire Fighter (M1516T), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated in its background report that the appellant possessed an unsatisfactory criminal background.

On appeal, the appellant acknowledges that at the time the appointing authority made its decision to remove his name from the list, he was facing pending criminal charges for illegal possession of a weapon. He asserts that he legally purchased and registered the weapon and presents documentation to show that this matter was dismissed on January 29, 2018.

In reply, the appointing authority states that the appellant has a history of being charged with illegal possession of weapons as both a juvenile and as an adult. It submits its background report, dated September 6, 2017,¹ that shows that the appellant was arrested as a juvenile in 2005 and 2006 on handgun charges, was

¹ The background report submitted by the appointing authority in response to the appeal is not dated. However, this same background report was initially submitted to the Division of Agency Services and it was dated September 6, 2017.

arrested as an adult in 2016 for unlawful possession of handgun and possession of ammunition, was observed in 2006 by school security engaged in an assault, had 11 moving violations in the past five years and 34 violations for his complete driving history, and the appointing authority emphasizes that the appellant acknowledged that he was facing a possession of weapon charge at the time it removed his name from the list.

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.

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 Civil Service Commission (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). Moreover, it is noted that the removal of eligibles from Fire Fighter lists on the basis of adverse criminal records have been upheld. *See In the Matter of James Alessio* (MSB, decided March 9, 1999).

Further, it is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a fire department, when requested for purposes of making a hiring decision. However, *N.J.S.A.* 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. Accordingly, the disability arising under *N.J.A.C.* 4A:4-

4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal. However, it is noted that although it is clear that the appellant was never convicted of a crime, he has been arrested on several occasions. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

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.

In the instant matter, a review of the record indicates that the appellant was twice charged with unlawful possession of a weapon or similar charges as a juvenile and was arrested as an adult for the same or similar charges as recently as December 2016. Further, the appointing authority's background report, dated September 6, 2017, indicates that the December 2016 charges were still pending at the time it made its decision to remove his name from the list. In other words, the fact that December 2016 charges were subsequently dismissed on January 29, 2018 are of no consequence as the appointing authority had a valid reason to remove the appellant's name based on the information that was known to it at the time it made its decision. This is particularly so considering the appellant's previous arrests involving the possession of weapons.

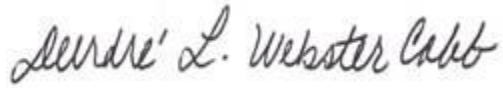
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Fire Fighter (M1516T), East Orange.

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 18th DAY OF JULY, 2018



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