

**CONFIDENTIAL**



**STATE OF NEW JERSEY**

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

In the Matter of D.M., Police Officer  
(S9999R), City of Newark

CSC Docket No. 2017-3480

List Removal

**ISSUED: JULY 19, 2018**

D.M. appeals the removal of his name from the eligible list for Police Officer (S9999R), City of Newark, due to an unsatisfactory employment record.

By way of background, the appellant appeared on the Police Officer (S9999R), City of Newark, eligible list, which promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified on January 7, 2015. The appointing authority returned the certification, removing the appellant on the basis that he was not psychologically suited for a Police Officer position. The appellant then pursued an appeal with the Civil Service Commission (Commission). The appeal was brought before the Medical Review Panel (Panel) on September 28, 2016, which recommended that the appellant be reinstated to the subject eligible list. The Panel noted that the negative recommendations related to the appellant's "borderline intelligence, lack of work history, poor judgment and questionable behavior." The City of Newark's psychological evaluator also concluded that the appellant presented "as too immature for a [P]olice [O]fficer position." However, the Panel indicated that the appellant was attending college and reported earning a grade point average of 3.2 and previously had two psychological evaluations for Correction Officer positions, which he passed. The appellant did not have a history of arrests, substance use or abuse, mental illness, driver's license suspensions, or credit problems. The Panel also indicated that the appellant had been serving as a County Correction Officer with Essex County since 2015 and "denied being reprimanded, 'written up' or disciplined while on the job." Thus, based on a review of the psychological evaluations of the City of Newark and the appellant's independent evaluator, including the test results and behavioral record, and the

appellant's presentation before the Panel, the Panel found that the appellant was psychologically suited for the Police Officer position. Upon its review, the Commission accepted and adopted the Panel's findings and conclusions and ordered that the appellant be restored to the subject eligible list. Additionally, the Commission ordered that "[a]bsent any disqualification issue ascertained through an updated background check conducted after a conditional offer of appointment, the appellant's appointment is otherwise mandated." The appellant was also granted a retroactive date of appointment to the date that he would have been appointed had he not been removed from the subject eligible list. *See In the Matter of D.M.* (CSC, decided December 7, 2016).<sup>1</sup> Accordingly, the subject certification was returned to the appointing authority to properly dispose of the certification.

In disposing of the certification, the appointing authority requested that the appellant's name be removed due to an unsatisfactory employment record. Specifically, the appointing authority found that during his employment with Essex County, the appellant received counseling and an oral reprimand for violations of post orders on July 17, 2015 and July 23, 2015; a two-day suspension for "Personal Conduct/Safety Security" on August 25, 2015; and an "Oral Written Reprimand" for "Major/Conduct Downgraded" on October 15, 2015. The last charge involved threatening to cause serious bodily harm to a fellow officer. The investigation of the appellant's background also revealed that the appellant failed to attend training and received an "Oral Written Reprimand" on December 23, 2015. Moreover, the appellant received a three-day and five-day suspension for "Attendance Control" and "Insubordination" on September 9, 2016 and September 30, 2016, respectively. He was also counseled for lateness and neglect of duty on January 10, 2017 and January 11, 2017, respectively. Furthermore, on March 8, 2017, the appellant was charged with "Major Insubordination," which at the time of the investigation was pending a departmental hearing. It was asserted that the appellant was found playing cards with an inmate. The appointing authority's investigator was advised that the appellant was going to resign on March 30, 2017. It is noted that agency records reveal that the appellant was appointed as a County Correction Officer with Essex County, effective June 6, 2015, and resigned in good standing effective March 25, 2017. A Preliminary Notice of Disciplinary Action had been issued against the appellant on March 13, 2017, recommending a sanction of a 30 working day suspension. However, on April 5, 2017, a Final Notice of Disciplinary Action (FNDA) was issued, withdrawing the March 13, 2017 charges and accepting the appellant's resignation on March 25, 2017. Therefore, based on this employment record, the appointing authority's request for removal of the appellant's name from the subject certification was upheld.

On appeal to the Commission, the appellant submits a recommendation from a County Correction Lieutenant with Essex County, who was his shift commander.

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<sup>1</sup> The record indicates that appointments were made from the subject certification effective April 29, 2015.

The County Correction Lieutenant states that “[i]n the time [he has] known him, [the appellant] went from being an immature kid to graduating the police academy, making him become a strong employee – capable of taking control of his assignments and executing [them] to the fullest.” He further states that the appellant “started his career and has had his share of discipline issues. Being in corrections for 23 years [the County Correction Lieutenant] can attribute these issues to immaturity and lack of knowledge for a paramilitary organization. Once [the appellant] graduated the police academy and returned to the facility he was a completely different officer. He proved to all his supervisors that he had matured and now respected his position as an officer with the department.” The County Correction Lieutenant indicates that the appellant will be an asset to any organization and highly recommends him to serve as a Police Officer with the City of Newark.

Moreover, the appellant presents a copy of the April 5, 2017 FNDA issued against him by Essex County, as well as his resignation letter. He notes that his attorney, Darryl M. Saunders, Esq., who filed the appeal on his behalf “has been physically missing for a few months” and “has not submitted anything on [his] behalf.”<sup>2</sup> He states that “[a]s a client of Mr. Darryl Saunders, I thought bringing this issue to the [C]ommission [sic] attention is very vital in determining my fate. Throughout my case there has been a lot of contradicting facts that does not add up.” He submits a copy of the New Jersey Courts Attorney Index, which shows that Saunders is administratively ineligible to practice law.

Furthermore, the appellant explains his association with a cousin who is alleged to be a high-ranking “blood member.” He indicates that when he visited him, he was with his grandmother and not in the hiring process with any law enforcement agency. He disclosed this information to the appointing authority and does not “socialize” with this individual. Additionally, the appellant challenges the October 25, 2015, December 23, 2015, and September 30, 2016 disciplines he received from Essex County, and the “Major Insubordination” charges on March 8, 2017 which were withdrawn. He asserts that he “was not academy trained for the job duties/functions which enabled [him] to receive disciplinary sanctions,” which he contends were either withdrawn but he still received a sanction or that the statements were not true.

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, submits the appellant’s updated investigation report which lists his disciplinary history with Essex County.

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<sup>2</sup> The above-referenced information was submitted by the appellant on his own behalf.

## 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 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 an appointment. Moreover, *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 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. Additionally, *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 individual from an eligible list who has a prior employment history which relates adversely to the position sought. Further, *N.J.A.C.* 4A:4-6.3(b) indicates that in examination and selection appeals, the appellant shall have the burden of proof, except for medical and psychological disqualification appeals, where the appointing authority shall have the burden of proof.

In the instant matter, the appointing authority removed the appellant from the subject eligible list based on his employment history, which was ascertained through the updated background check after the appellant's successful appeal of his psychological disqualification for the Police Officer position. The appellant's history reveals several minor disciplines<sup>3</sup> in less than two years of employment as a County Correction Officer, including written reprimands and suspensions of two, three, and five days. While minor discipline ordinarily would not remove a candidate from an eligible list,<sup>4</sup> the Commission has removed candidates from eligible lists under circumstances where the candidate, in his or her prior employment, resigned while disciplinary charges were pending or resigned in good standing in lieu of discipline and had a prior disciplinary history. For example, in *Strasser v. Camden County* (MSB, decided May 28, 1992), the removal of an eligible from an open competitive list based on the eligible's employment history which showed that he had resigned while disciplinary charges imposing a removal were pending was upheld. Moreover, in *In the Matter of Darren Grossman* (MSB, decided January 17, 2001), it was found that the appellant's employment history as a Police Officer with Jackson Township (Jackson) was sufficient to remove him from the Police Officer, Township of Marlboro, eligible list since he resigned in good standing in exchange for Jackson not proceeding with disciplinary charges. The appellant's past employment record

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<sup>3</sup> Minor discipline is defined under Civil Service rules as a formal written reprimand or a suspension or fine of five working days or less. See *N.J.A.C.* 4A:2-3.1(a).

<sup>4</sup> Compare, *In the Matter of Thomas DiOrio* (CSC, decided March 11, 2009) (Commission noted that even though a prior minor disciplinary history is generally not sufficient to remove a candidate from a list, the appellant's statement that he utilized a significant amount of sick days prior to his resignation because if he did not use them he would receive compensation for them anyway warranted his removal from the list).

also reflected a three-day suspension as a Police Officer with East Orange. Similarly, in *In the Matter of Ralph Lubin* (MSB, decided May 8, 2001), the appellant's termination was recorded as a resignation in good standing as a result of a settlement agreement, whereby the appointing authority did not recommend or institute criminal proceedings against the appellant in exchange for the appellant resigning in good standing and withdrawing his grievance. The appellant's prior disciplinary history also included a five-day suspension. In the instant matter, the appellant resigned his position during a pending major disciplinary sanction of a 30 working day suspension. Although the charges had been withdrawn, it is apparent that they were withdrawn as a result of the appellant's resignation. The appellant was also subject to prior minor disciplines. Therefore, based on the updated background check, the appointing authority has presented a sufficient basis to remove the appellant's name from the subject eligible list.

Moreover, most troubling is the fact that the appellant was not truthful to the Panel. In that regard, *N.J.A.C. 4A:4-6.1(a)6* allows the removal of 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. The Panel's meeting was held on September 28, 2016 and the appellant *denied* being reprimanded, written up, or disciplined as a County Correction Officer. However, the investigation revealed numerous infractions prior to the Panel's meeting, including violations of post orders on July 17, 2015 and July 23, 2015 for which the appellant received counseling and an oral reprimand, respectively; a two-day suspension for "Personal Conduct/Safety Security" on August 25, 2015; an "Oral Written Reprimand" for "Major/Conduct Downgraded" on October 15, 2015, an "Oral Written Reprimand" for failure to attend training on December 23, 2015, and a three-day suspension for "Attendance Control" on September 9, 2016. Had the appellant been truthful, the Panel may not have recommended his reinstatement to the subject eligible list, as there would have been sufficient evidence of the appellant's immaturity as determined by the City of Newark's psychological evaluator. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. A Police Officer holds a highly visible and sensitive position within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. The public expects applicants to present a personal background that exhibits respect for the law and rules. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560, 566 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also, In re Phillips*, 117 *N.J.* 567 (1990). *See also, In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003). The appellant's disciplinary record and his egregious misrepresentations to the Panel, and thus to the Commission, are not conducive for an individual seeking a position as a Police Officer. Accordingly, the appellant has failed to meet his burden of proof in this matter and his name removed from the Police Officer (S9999R), City of Newark, eligible list.

It is noted that although the appellant challenges his prior disciplinary charges, he does not dispute the record of his discipline. Additionally, the Commission cannot review the sufficiency of the charges which led to the appellant's minor disciplines or counseling. In that regard, appeals of minor disciplinary actions taken against county or municipal government employees are not reviewable by the Commission since the Legislature has limited such reviews to employees of State service. *See N.J.S.A. 11A:2-16*. Therefore, if the appellant wanted to challenge any minor disciplinary action, he needed to do so under standards and procedures established by the jurisdiction or by a negotiated labor agreement. If no mechanism was available, he could have sought relief through the Law Division of the Superior Court of New Jersey. *See Romanowski v. Brick Township*, 185 N.J. Super. 197 (Law Div. 1982).

Lastly, the Commission does not have jurisdiction to review the issues relating to the appellant's attorney. While an appellant may be represented by legal counsel, he or she is not required to obtain such services to file an appeal. Further, the Commission notes that the appellant had the opportunity to submit information on his own behalf. Accordingly, issues with his representation does not provide the appellant with the relief he seeks or sustains his burden of proof in this matter. *See e.g., In the Matter of William J. Bowen* (MSB, decided September 26, 2007) (Appellant's argument that his settlement was legally invalid was essentially a claim of legal malpractice, not reviewable by the former Merit System Board, and since the settlement agreement complied with Civil Service law and rules, no basis existed to invalidate the settlement); *In the Matter of Annemarie Krusznis* (MSB, decided May 18, 2005) (Appellant's reliance on her attorney to file a timely good faith appeal of her layoff did not provide a basis to grant relief when the attorney never filed the appeal and the appellant subsequently filed an untimely appeal). *See In the Matter of George Phillips*, Docket No. A-2296-02T2 (App. Div. April 6, 2004) (Notwithstanding the appellant's contention that he and his counsel were misled by the union to believe that an appeal had been filed, the Appellate Division affirmed the decision denying the appellant's appeal of his removal as untimely since it was filed beyond the 20-day filing period).

### 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 18<sup>TH</sup> DAY OF JULY, 2018



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