



STATE OF NEW JERSEY

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

In the Matter of R.H., Police Officer
(S9999U), City of Orange Township

CSC Docket No. 2018-432

List Removal Appeal

ISSUED: SEPTEMBER 24, 2018 (HS)

R.H. appeals the removal of his name from the eligible list for Police Officer (S9999U), City of Orange Township on the basis of an unsatisfactory background report.

The appellant, a non-veteran, took and passed the open competitive examination for Police Officer (S9999U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 29, 2017 and expires on March 30, 2019. The appellant’s name was certified to the appointing authority on April 13, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant’s name due to an unsatisfactory background report. Specifically, the appointing authority asserted that the appellant was charged with disorderly conduct in violation of *N.J.S.A. 2C:33-2(b)* in 2009 and exhibiting a false motor vehicle insurance card in violation of *N.J.S.A. 2C:21-2.3(b)* in 2011. Both charges were amended to a charge of violating a local ordinance, and the appellant was found guilty on the amended charges.¹ The appellant’s certified driver abstract indicated 22 violations between November 2008 and January 2015, including failure to wear seat belt; maintenance of lamps; no license, registration or insurance ID in possession; failure to obey directional signal; unsafe operation of a motor vehicle; improper display/fictitious plates; delaying traffic; and speeding. The appellant was terminated from a security company in 2011 and from a shipping company in 2013, but was later employed as an armed security officer.

¹ All records concerning both charges were expunged in 2015.

On appeal, the appellant requested copies of the information used by the appointing authority to support his removal.

In response, the appointing authority reiterated its reasons for the appellant's removal from the subject eligible list. It also indicated that it provided the appellant with copies of the information presented to this agency in disposing of the subject certification.

Despite an opportunity to do so, no further arguments were submitted by the appellant.

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. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought.

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). *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 name from an eligible list was in error.

A review of the record indicates that the appointing authority's request to remove the appellant's name from the subject eligible list was justified. The appellant's driving record reflects numerous violations between November 2008 and January 2015 that reveal a persistent disregard for the motor vehicle laws, behavior that is incompatible with the duties of a law enforcement officer. See *Joy, supra*. Within that timeframe, the appellant was also found guilty of violating a local ordinance on two occasions and terminated from employment on two occasions. The foregoing concerns are indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a municipal Police Officer. Moreover, they outweigh any evidence of rehabilitation presented, namely the appellant's expungement and current employment as an armed security officer. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the 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 municipal Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's driving record, employment record and ordinance violations provide a sufficient basis to remove his name from the subject 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 20TH DAY OF SEPTEMBER, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c. R.H.
Dwayne D. Warren
Kelly Glenn