



STATE OF NEW JERSEY

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

In the Matter of Steffon L. Josey,
Police Officer (S9999R),
North Brunswick

CSC Docket No. 2020-685

List Removal Appeal

ISSUED: DECEMBER 6, 2019 (DASV)

Steffon L. Josey appeals the removal of his name from the Police Officer (S9999R), North Brunswick, eligible list due to an unsatisfactory criminal record.

By way of background, the appellant, a nonveteran, was initially certified from the Police Officer (S9999R), North Brunswick, eligible list,¹ on August 21, 2014. However, he was removed for failure to respond to the Notice of Certification. The certification was disposed on January 23, 2015. He did not file an appeal at that time. Five months later, in a letter postmarked June 20, 2015, the appellant appealed his removal. The appellant explained that he did not respond to the Notice of Certification due to “legal troubles” which began prior to his certification. In that regard, the appellant was arrested on September 20, 2013 for having left his firearm in the glove compartment of his car, a second-degree crime. Thereafter, he sought a pardon from the Governor, which was granted on June 8, 2015. Upon review, the Civil Service Commission (Commission) initially addressed the timeliness of the appellant’s appeal. The Commission indicated that, although the appellant was correct that he was not removed from the pool of eligibles (S9999R) as his removal was not “for cause,” he was still required to file an appeal since he was removed from the North Brunswick eligible list. However, the record revealed that once the appellant received the Governor’s pardon, he filed his appeal within 20 days from that date. The Commission found good cause to relax the 20-day time period and address the merits of his appeal. The Commission accepted the

¹ The Police Officer (S9999R), North Brunswick, eligible list promulgated on May 2, 2014 and expired on March 22, 2017.

appellant's reasoning for not responding to the Notice of Certification due to his legal issues. Moreover, the appointing authority did not challenge the appellant's restoration to the subject eligible list and indicated that it took no position as to the appellant's qualifications at that time. Therefore, under these circumstances, the Commission restored the appellant's name to the subject eligible list, for prospective appointment opportunities only, and directed the Division of Agency Services to determine the appellant's proper placement on the next certification of the Police Officer (S9999R), North Brunswick, eligible list. *See In the Matter of Steffon Josey-Davis* (CSC, decided August 19, 2015).

Thereafter, the appellant's name was certified in the number one position on the December 15, 2015 certification (OL151551) of the Police Officer (S9999R), North Brunswick, eligible list. In disposing of the certification, the appointing authority removed the appellant's name due to an unsatisfactory criminal record. Among other documents, the appointing authority submitted a May 2, 2016 letter addressed to the appellant, advising him that his name had been removed due to a background investigation which revealed an arrest and conviction "of unlawful possession of a handgun." The appointing authority also informed the appellant in the letter that he could appeal the action within 20 days of receipt of the letter. The certification file also contained the appellant's June 8, 2015 Pardon and an Order of Expungement, dated January 29, 2016.² The certification was disposed on June 17, 2016, upholding the appointing authority's request to remove the appellant. Notices of removal were sent to the removed candidates on or about June 17, 2016. It is noted that there is no record of the appellant appealing this removal at that time.

In a letter dated August 30, 2019 and received by the Division of Appeals and Regulatory Affairs on September 5, 2019, the appellant appeals his removal from the December 15, 2015 certification. Specifically, he states "I write to you today to appeal a notice of removal #**OL151551**, dated **May 2nd, 2016** for North Brunswick's Municipal Police Officer open competitive list citing an unsatisfactory background investigation." He contends that the "documentation will show that the North Brunswick Police Department has displayed Discriminatory hiring practices and is in violation of State and [f]ederal laws." He also alleges that the appointing authority withheld "Government documentation" regarding the appointment process. The appellant maintains that the reason for his appeal to be granted "is simple." He explains that he was pardoned and cleared of all wrongdoing and his charges were expunged. The appellant also indicates that his firearm was returned to him. In addition, the appellant alleges that he was told by the North Brunswick Police Department that his pardon "meant nothing" and he would still be considered a convicted felon. Moreover, he contends that, in disposing of the subject certification, the appointing authority did not submit his pardon "which resulted in my denial of an employment opportunity for an additional three years. (2019)."

² The appellant's September 20, 2013 arrest was expunged, as well as a November 1, 2008 arrest.

Moreover, he contends that the supervisor of the Certifications Unit “did not do his due diligence.” The supervisor allowed him to be removed after the Commission granted his appeal. In support of his appeal, the appellant submits the June 8, 2015 Pardon, the January 29, 2016 Order of Expungement, and the appointing authority’s May 2, 2016 letter of removal.

Additionally, in a letter dated September 17, 2019, the appellant indicates that he did not receive the June 17, 2016 notice of removal. He only received the May 2, 2016 letter from the appointing authority. Further, the appellant explains that the reason why he did not appeal within 20 days was “because [he] was exhausted! Mentally, physically and financially. Mentally due to the energy that went into studying to ensure [he] placed in the highest percentile (I placed 1st)³ and the trauma endured over the course of the previous year fighting [his] case.” Moreover, the appellant states that he was physically exhausted due to stress and the “irreparable damage” inflicted on his reputation. In addition, he spent “tens of thousands of dollars” in legal expenses. The appellant asserts that he “had nothing left to give at that point” and “had no other options but to seek employment elsewhere.” In summary, he states that he did not appeal within 20 days “due to financial constraints and costliness of the process.”

Furthermore, in a letter dated September 20, 2019, the appellant states that “because [he] was wrongfully arrested, convicted and have now been discriminated against and barred employment from a Police Department in the County of ‘Middlesex’ *New Jersey* where [he] was once prosecuted, this department has displayed racial discrimination, nepotism and other discriminatory hiring practices and retaliation in regards to this matter.” The appellant contends that once he received the Governor’s pardon, he should not have been subjected to any more penalties or restrictions. He argues that an employer can only seek information relating to an applicant’s criminal history only after conducting an interview of that applicant. However, he acknowledges that one of the exceptions where an employer may ask about a criminal history is for a position in law enforcement. The appellant asserts that an employer may refuse to hire an applicant based on an arrest or conviction unless it has been expunged or pardoned. He explains the circumstances of his 2013 arrest and his subsequent legal issues through his receipt of a pardon.

By letter dated September 18, 2019, the appointing authority, represented by Lesley Sotolongo, Esq., responds that in disposing of the subject certification, it

³ It is noted that upon his restoration to the Police Officer (S9999R), North Brunswick, eligible list, the appellant was not required to take another Law Enforcement Examination (LEE). In its prior decision, the Commission restored the appellant for certification and prospective appointment opportunities. His rank of 3383 on the LEE (S9999R) did not change; however, he was listed as the number one eligible on the December 15, 2015 certification because his rank on the LEE (S9999R) was higher than the other candidates that were certified at that time.

submitted its May 2, 2016 letter, four pages of the appellant's background questionnaire, three documents regarding the appellant's criminal charges for possession of a handgun, and five documents which included the appellant's pardon and Order of Expungement. The appointing authority notes that *N.J.A.C.* 4A:4-4.7(a)4ii provides that "[t]he presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, correctional police officer, juvenile detention officer, firefighter, or judiciary titles and other titles as the Chairperson or designee may determine." Further, it indicates that, pursuant to *N.J.S.A.* 2C:52-27(c), information on expunged records may be revealed if a petitioner is seeking employment in law enforcement.

In a supplemental letter dated October 7, 2019, the appointing authority replies that the appellant's appeal is untimely, and he has not shown good cause to allow the appeal to proceed. It emphasizes that it sent the appellant notice by way of its May 2, 2016 letter and advised him of the 20-day time period to appeal. Furthermore, the appellant acknowledges that he did not appeal the May 2, 2016 letter, and a notice of removal was sent to him by this agency. The appointing authority maintains that the appellant's reasons for not appealing do not justify his failure to appeal. Nonetheless, it argues that it had sufficient cause to remove the appellant's name from the subject eligible list due to the nature of the expunged records. It claims that it did not discriminate against him for any reason. Moreover, the appointing authority submits that the appellant is not entitled to a mandated appointment and could have been bypassed pursuant to the "Rule of Three," *N.J.S.A.* 11A:4-8 and *N.J.A.C.* 4A:4-4.8. In conclusion, the appointing authority maintains that it properly removed the appellant due to his criminal record and its determination that the appellant "did not possess the character warranted for a position" as a Police Officer.

CONCLUSION

Initially, it is noted that there is no jurisdictional statutory timeline within which the appellant was required to appeal. *See Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993). However, the appellant was required to file an appeal pursuant to regulatory provisions. In that regard, *N.J.A.C.* 4A:2-1.1(b) states that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or *should reasonably have known of the decision, situation, or action being appealed* [emphasis added]. *See also N.J.A.C.* 4A:4-6.6(a)1 (Disqualification appeals). In the instant matter, although the appellant states that he did not receive the June 17, 2016 notice of removal, he clearly knew that he would be removed from the subject eligible as he received the May 2, 2016 letter from the appointing authority informing him of this adverse action. The appointing authority also advised him of his appeal rights and that should he wish to file an appeal, he may do so within 20 days of receipt of the letter. However, the appellant chose not to file an appeal at that time.

Additionally, there is no basis in this particular case to extend or relax the time for appeal. See *N.J.A.C.* 4A:1-1.2(c) (the Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting his right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing “good cause” in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com’n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). See also *Allen, supra* (allowing relaxation of the appeal rules where Police Officer repeatedly, but unsuccessfully, sought clarification of his employment status); *In the Matter of Rochelle Rosen*, Docket No. A-6468-03T3 (App. Div. June 24, 2005) (appropriate to decline to relax 20-day time frame for filing an appeal in light of an unexplained two-year delay in filing an appeal); and *In the Matter of Wayne Varga* (MSB, decided March 23, 2005) (appellant unaware of time period for filing appeal who ultimately filed appeal six months later who argued that he had to address the consequences of his job loss not a basis to overlook inordinate delay in filing appeal).

In the instant matter, the appellant explains that due to the personal hardship he suffered as a result of his legal issues as well as financial constraints, he decided to find employment elsewhere and not file an appeal of his removal. While the Commission understands the financial burden an appeal may cause, it does not overcome an appellant’s responsibility to pursue an appeal.⁴ Further, the Commission is mindful of personal issues that may affect a candidate’s decision not to file an appeal. However, this decision was a choice that the appellant made and his alone. In addition, while the appellant expressed the reasons why he did not file an appeal, he did not provide an explanation why he waited over three years to challenge his removal. Such a profound delay is not excusable. It is emphasized that, in addition to the appointing authority’s notice, in *In the Matter of Steffon Josey-Davis, supra*, the Commission set forth the time period to file appeals. In that case, the appellant’s appeal of his failure to respond to the Notice of Certification was also untimely. The appellant was given an opportunity to rectify his failure to respond and to appeal. However, in the present case the Commission finds that the appellant’s reasons are insufficient to overlook the appellant’s inordinate delay in filing his appeal. Accordingly, the appellant has failed to show good cause to justify relaxing the requirements of *N.J.A.C.* 4A:2-1.1(b) and *N.J.A.C.* 4A:4-6.6(a)1. The appellant’s appeal is clearly out of time. See also *In the Matter of Roberta Howard* (MSB, decided January 28, 2004); *In the Matter of Henrietta Mik* (MSB, decided November 19, 2003).

⁴ The \$20 filing fee is waived for individuals who receive certain government assistance. See *N.J.A.C.* 4A:2-1.8(e).

Therefore, the merits of the appellant's appeal at this juncture cannot be addressed. However, the Commission finds it necessary to address the following inaccuracies. Contrary to the appellant's assertion, it is clear that *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* allow the Commission to remove an eligible's name 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 presentation of a pardon or an expungement shall prohibit removal from a list, 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. *See N.J.A.C. 4A:4-4.7(a)4ii*. Thus, despite the appellant's pardon and expungement, his removal from the subject eligible list was not prohibited. Furthermore, the appellant makes unsubstantiated allegations regarding the documents submitted in the disposition of the subject certification. As the appointing authority indicates, and as verified by a review of the certification file, the appellant's June 8, 2015 Pardon and January 29, 2016 Order of Expungement was included. This agency nonetheless determined that removal was appropriate. It is noted that the expectation of finality attaches to agency determinations upon expiration of the appeal period.

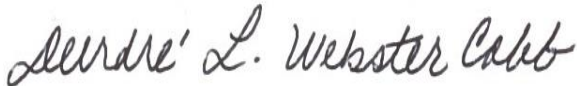
Accordingly, the Commission finds no basis for further comment and dismisses the appellant's appeal as untimely.

ORDER

Therefore, it is ordered that this appeal be dismissed as untimely.

This is the final administrative action in the matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF DECEMBER , 2019



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