



STATE OF NEW JERSEY

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

In the Matter of M.N., Sheriff's
Officer (S9999U), Hudson County

List Removal Appeal

CSC Docket No. 2019-2062

ISSUED: DECEMBER 18, 2019 (ABR)

M.N. appeals the removal of his name from the Sheriff's Officer (S9999U), Hudson County eligible list on the basis of an unsatisfactory background report.

The appellant, a non-veteran, applied for and passed the examination for Sheriff's Officer (S9999U), Hudson County which had a closing date of August 31, 2016. The subsequent eligible list promulgated on March 29, 2017 and expires on March 30, 2020. The appellant's name was certified to the appointing authority on June 11, 2018. 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 stated, in part, that the appellant's employment record included several suspensions while employed as an Emergency Medical Technician with Union City. Among his suspensions was a 10 working day suspension in October 2018 for violating a departmental policy against publicly criticizing the official action of a superior officer; a two working day suspension in April 2017 for misuse of public property (motor vehicles); a three working day suspension in April 2017 for misuse of public property (motor vehicles); an eight working day suspension in November 2014 based upon charges of incompetency/inefficiency/failure to perform duties, inability to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause; a three working day suspension in December 2013 for misuse of public property (motor vehicles); and a four working day suspension for conduct unbecoming a public employee and other sufficient cause in September 2013. In support, the appointing authority submitted copies of documents related to the foregoing disciplinary actions. It is noted that these documents indicate that the appellant's

10 working day suspension in October 2018 stemmed from the appellant calling a superior “an EDP” (*i.e.*, an emotionally-disturbed person) in a social media post and that the appellant’s eight working day suspension in November 2014 was based upon a June 26, 2014 incident where the appellant, while on duty, went to a barbershop to get a haircut without permission and was unable to respond to a call for an ambulance.¹ The appointing authority also asserted that the appellant’s military background was problematic, as he stated in his pre-employment application that as a member of the United States Marine Corps (USMC), he was demoted in February 2014 due to unauthorized absences and that he was administratively separated in April 2014 due to unsatisfactory performance. The appointing authority submitted documentation from the USMC which indicated that the appellant missed 17 regularly-scheduled drills between May 2013 and March 2014 and that his other than honorable discharge in May 2014 was for misconduct, including arrests on November 8, 2010, December 21, 2012 and September 4, 2013.²

On appeal to the Civil Service Commission (Commission), the appellant argues that the appointing authority did not conduct his background investigation in good faith because the appointing authority requested his personnel file without his consent, its background investigators had a conflict of interest and it failed to consider a letter of recommendation from his current employer. Concerning the allegation that the appointing authority improperly accessed his personnel record, he states that his file does not contain any documentation evidencing that his employer authorized its release to the appointing authority, as occurred with other background investigations for law enforcement positions. In addition, he states that that the staff members in his office who manage personnel records denied furnishing any information to the appointing authority’s investigators. He proffers that this means that the appointing authority’s background investigators were able to access his file without following proper procedures because of a personal relationship with Union City’s Chief of Emergency Medical Services. He asserts that the foregoing evidences that the appointing authority’s background investigators had a conflict of interest.

The appellant also argues that he has a satisfactory background for the position. In this regard, he maintains that because he passed a background check

¹ The appellant did not appeal either major disciplinary suspension.

² The record in this matter indicates that the appellant was required to pay fines and court costs, and sentenced to 10 days of community service after he pled guilty to the charge stemming from the November 2010 arrest. The charges related to the November 8, 2010 and December 21, 2012 arrests were dismissed on March 19, 2013 and April 21, 2014, respectively. On appeal, the appellant asserts that his three arrests were subsequently expunged from his record and that he provided the appointing authority with an Order of Expungement when he submitted his application. However, neither the appointing authority nor the appellant has submitted a copy of the Order of Expungement on appeal.

for a County Correction Officer position with Hudson County,³ the appointing authority should not have removed him from the subject eligible list on that basis. In addition, he asserts, in relevant part, that his 10-day suspension for publicly criticizing a superior did not support a finding that he had an unsuitable background because it was an “isolated incident.” Further, he argues that the charges in that matter were inaccurate and/or inappropriate because they were not supported by the facts. Notably, he maintains that the individual he criticized was not his superior because he was not part of the chain of command that oversaw his position. The appellant argues that the appointing authority did not properly analyze his November 2014 suspension, as he maintains that the incident occurred on a day “that was not busy with medical calls,” where there was “a lot of down time” and his department’s policies did not prohibit him from taking care of personal errands within Union City while on duty or preclude him from asking for another ambulance for taking the call at issue. As to his December 2013 and April 2017 suspensions, which resulted from motor vehicle accidents while on duty, he contends that they do not reflect poorly on his background because they were made without regard to fault. Concerning his military record, the appellant acknowledges that he missed several drills because of personal circumstances, but he states that he made arrangements to make up the drill days and return in good standing with his unit. He maintains that his discharge was a surprise because his platoon and company commanders had indicated his attendance and arrest issues would be “ke[pt] at the platoon level with no further action.” He states that based upon the foregoing, he has a pending appeal before the Naval Discharge Review Board. Finally, the appellant argues that this agency erred in relying upon the Commission’s decision, *In the Matter of Joseph Poplawski, Sheriff’s Officer Sergeant (PC3017C), Burlington County*, Docket No. A-5359-06T5 (App. Div. May 30, 2008), for the proposition that his disciplinary record was sufficient to support his removal from the subject eligible list.⁴ Specifically, he argues that *Poplawski* is inapplicable because that case involved an eligible list for higher-level law enforcement title (Sheriff’s Officer Sergeant), while the subject eligible list involves an entry-level title. The appellant further asserts that his case is similar to *In the Matter of Darren Jenkins II* (CSC, decided February 22, 2017) and *In the Matter of Donnel Shuler* (CSC, decided April 6, 2011).

In response, the appointing authority, represented by Nidara Rourk, Assistant County Counsel, submits a copy of the background report and the documentation it relied upon when requesting the removal of the appellant’s name from the subject eligible list.

³ The appellant was certified to Hudson County from the September 11, 2018 Certification (OL180950) from the County Correction Officer (S9999U) eligible list. Hudson County bypassed the appellant when disposing of the certification on February 27, 2019.

⁴ Initially, staff from the Division of Appeals and Regulatory Affairs responded to the appellant’s appeal by letter dated April 25, 2019, which indicated that per *Poplawski, supra.*, the appellant did not have a basis to continue with the appeal. Upon the appellant’s subsequent request, the matter was reopened for a determination by the Commission.

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 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, the appointing authority removed the appellant's name from the subject eligible list because it determined that he had an unsatisfactory background due to his employment history as an Emergency Medical Technician with Union City and service record in the USMC, including an other than honorable discharge. Initially, the Commission finds that the appellant has not provided a sufficient basis to support his claim that the appointing authority did not conduct its background investigation in good faith. The appellant's principal claim in this regard is that the appointing authority improperly accessed his personnel record. However, the record demonstrates that the appellant, as part of his pre-employment application, signed an Authorization for Release of Information on July 7, 2018, which authorizes in part, the USMC, and all local government and law enforcement agencies to furnish the appointing authority or its authorized representatives with any and all available information and copies of his records. As such, his contention that the appointing authority improperly obtained his records or is without merit. Further, the appellant's claim that the appointing authority's investigators had a conflict of interest is mere speculation without evidence that is insufficient to reverse the removal of his name from the subject eligible list.

Concerning the suitability of the appellant's background for the subject position, the appellant's assertion that the appointing authority should not have removed him from the subject eligible list because he passed a background check for a County Correction Officer position with Hudson County is without merit. The Commission observes that the relevant inquiry in this matter is whether the appointing authority had a sufficient basis to request the removal of the appellant's name from the eligible list for the subject title when it disposed of the certification at issue. Nevertheless, the disposition of the prior certification cited by the appellant did not preclude the appointing authority from finding that the appellant's background, including his employment history with Union City and the USMC, warranted his removal from the subject eligible list. As to the question of whether the appellant's disciplinary history as an Emergency Medical Technician supported the removal of his name from the subject eligible list, the appellant asserts that the appointing authority failed to properly analyze the circumstances of

each incident. However, because the appellant did not timely appeal his major disciplinary suspensions, he may not in this matter relitigate the sufficiency of the earlier charges brought against him. See *In the Matter of Joseph Poplawski, supra*. As such, his record, which evidences a 10-day suspension in 2018 and an eight-day suspension in 2014, multiple minor disciplinary actions and an other than honorable discharge from the USMC, is sufficient to support his removal from the subject eligible list. In this regard, it is recognized that a Sheriff's Officer is a law enforcement employee who must enforce and promote adherence within to the law. Sheriff's Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the 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). Clearly, the appellant's extensive disciplinary history, particularly his major discipline as an Emergency Medical Technician, reflects poorly on his ability to enforce and promote adherence to the law and it supports the appointing authority's determination that he possessed an unsatisfactory background for the subject position. Finally, although the appellant asserts that *In the Matter of Darren Jenkins II, supra* and *In the Matter of Donnel Schuler, supra*, support his restoration to the subject eligible list, the Commission disagrees. In this regard, in *In the Matter of Darren Jenkins II*, the Commission reversed the list removal on the basis of an unsatisfactory employment record at issue because, in part, Union County failed to present evidence that Jenkins was formally disciplined during his prior employment. Conversely, in the instant matter, the appointing authority has produced detailed evidence of the appellant's extensive disciplinary record. Finally, *In the Matter of Donnel Schuler*, has no bearing on this case, as that decision involved the issue of an eligible's criminal history. Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing him from the Sheriff's Officer (S9999U) 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 18TH DAY OF DECEMBER, 2019

Deirdre' L. Webster Cobb

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