



STATE OF NEW JERSEY

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

In the Matter of Rodrigo Alexander,
Correctional Police Officer (S9988U),
Department of Corrections

List Removal Appeal

CSC Docket No. 2019-2160

ISSUED: JANUARY 16, 2020 (ABR)

Rodrigo Alexander, represented by Christopher J. O'Rourke, Esq., appeals his removal from the Correctional Police Officer (S9988U), Department of Corrections (DOC) eligible list on the basis of an unsatisfactory driving record.

The appellant, a non-veteran, applied for and passed the open competitive examination for Correctional Police Officer (S9988U), which had a closing date of August 31, 2016. The subject eligible list promulgated on March 30, 2017 and expired on March 29, 2019. The appellant's name was subsequently certified to the appointing authority. The appointing authority requested the removal of the appellant's name from the subject eligible list on the basis of an unsatisfactory driving record which included 10 moving violations between October 2011 and May 2017, and 10 points on his license as of May 2017.¹ Specifically, the 10 moving violations cited by the appointing authority included: failure to obey a directional signal in May 2016; using a handheld cell phone while driving in February 2016 and October 2011; failure to give a proper signal in June 2015; unsafe operation of a motor vehicle in January 2015; careless driving in December 2013; failure to wear a seatbelt in June 2013; and delaying traffic in April 2013, November 2012 and October 2011.

¹ Contrary to the appointing authority's assertion, the Certified Driver's Abstract shows that the appellant did not have any points on his license as of May 2017. In this regard, the appellant received two points for careless driving in December 2013 and two points for failure to give proper signal in June 2015. The points from these violations were offset by safe driving credits in December 2014 and June 2016, respectively.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the appointing authority is incorrect in its assertion that he had 10 points on his driver's license when he underwent pre-employment processing in May 2017. The appellant acknowledges that his driving record contains 10 infractions but he emphasizes that the only two moving violations for which he received points were careless driving in December 2013 and failure to give a proper signal in June 2015. He submits that he received two points for each violation, *i.e.*, four points overall. He further notes that his driver's license had zero points when he was completing pre-employment processing in May 2017. Moreover, he asserts that his driving record does not meet the appointing authority's proffered standard of removal for "eight or more moving violations within seven years of the promulgation date of the subject eligible list" as the two aforementioned citations were the only moving violations in his driving record. In this regard, he avers that *N.J.S.A.* 39:5-53 defines motor vehicle moving violation as "any violation of the motor vehicle laws of this State for which motor vehicle points are assessed by the Director of the Division of Motor Vehicles pursuant to P.L. 1982, c.43."² As such, he asserts that the other eight infractions noted in his Certified Driver's Abstract during the period at issue were not moving violations. Accordingly, he asserts that his driving record did not justify the removal of his name from the subject eligible list.

In response, the appointing authority argues that the appellant's driving record supports the removal of his name from the subject eligible list. In this regard, it submits that its internal criteria permit it to remove the name of any eligible who has eight or more moving violations within seven years of the promulgation date of the subject eligible list and for any eligible who "has eight or more current points on their driving record." It states that the appellant had 10 points on his driving record when it processed his application in May 2017. Accordingly, it asserts that the appellant's record is inconsistent with the standards expected of a law enforcement officer. In support, it submits a copy of the appellant's Certified Driver's Abstract dated May 7, 2017.

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. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists

² The Commission notes that *N.J.S.A.* 39:5-53 defines the term "motor vehicle moving violation" for purposes of P.L. 2003, c. 23, which governs situations where a person with diplomatic immunity is stopped by law enforcement for a violation of *N.J.S.A.* 2C:11-5, *N.J.S.A.* 2C:12-1 or a motor vehicle moving violation.

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).

In the instant matter, the appointing authority removed the appellant's name from the subject eligible list, in part, because it asserted that he had 10 points on his driver's license when he underwent pre-employment processing in May 2017. In this regard, the appointing authority cited its internal criteria of having eight current points on a driver's license. At the outset, the Commission finds that the appointing authority made a clear error in asserting that the appellant had 10 points on his driver's license in May 2017. Although the Certified Driver's Abstract that the appointing authority has submitted in support of the list removal at issue confirms that the appellant had 10 violations between October 2011 and May 2017, it reveals that he only received four points during this timeframe (two points for careless driving in December 2013 and two points for failure to give proper signal in June 2015). Moreover, he did not have any *current* points on his license as of May 2017, as the four points he accrued on his driver's license during the relevant period were offset by safe driving credits in December 2014 and June 2016.

Nevertheless, the foregoing error does not necessarily mean that the appellant's name should not have been removed from the subject eligible list on the basis of an unsatisfactory driving record. It is noted that the parties also dispute whether the appellant's name should have been removed from the subject eligible list based upon the appointing authority's proffered standard of having eight or more moving violations within seven years of the promulgation of the subject eligible list. However, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority. See, e.g., *In the Matter of Debra Dygon* (MSB, decided May 23, 2000). Here, the material inquiry for the Commission is not how many violations added points to the appellant's license or how many of his infractions were moving violations. Rather, the applicable standard is whether the appellant's driving record shows a pattern of disregard for the law and questionable judgment. In this regard, it is emphasized that candidates for law enforcement are held to high standards, as Correctional Police Officers, like municipal Police Officers, are law enforcement employees who must enforce and promote adherence to the law. The Commission notes that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an 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 Correctional Police Officers

to present a personal background that exhibits respect for the law and rules. The appellant's multiple driving infractions, including two violations less than a year prior to the closing date, do not demonstrate possession of these qualities. Accordingly, the record supports the removal of the appellant's name from the Correctional Police Officer (S9988U), DOC eligible list on the basis of an unsatisfactory driving record.

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 15TH DAY OF JANUARY, 2020



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