



STATE OF NEW JERSEY

In the Matter of Stephen Ventura,
Fire Fighter (M1556T), Newark

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

CSC Docket No. 2020-187

List Removal Appeal

ISSUED: JANUARY 17, 2020 (SLK)

Stephen Ventura, represented by Craig S. Gumpel, Esq., appeals the removal of his name from the eligible list for Fire Fighter (M1556T), Newark, on the basis of an unsatisfactory background.

The appellant took the open competitive examination for Fire Fighter (M1556T), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that in November 2018, the appellant was arrested and charged with Driving Under the Influence of Alcohol (DUI), which led to a guilty plea to an amended charge of Driving Vehicle While Impaired by Alcohol (DWI), he falsified his application by only indicating the he was called to testify as a witness as a victim of an assault concerning a 2015 incident and failed to indicate that he was a defendant as this incident led to him being charged with Aggravate Assault on a Police Officer, Terroristic Threats, Harassment and Simple Assault, he failed to indicate that he was issued a court date for the 2018 DUI charge, he failed to indicate that he was charged with a disorderly person's offense for the 2015 incident, he failed to indicate that he was arrested for the 2018 DUI charge, he listed that he received a DUI, Negligent Driving, Failure to Control Vehicle and DWI summonses for the 2018 incident, but failed to disclose he was also charged with DUI Per Se, he failed to provide a notarized letter explaining why he did not file taxes in 2015 as requested and he submitted a 2016 W-2 which indicated a Maryland address which he failed to disclose.

On appeal, concerning the 2018 DUI charge, the appellant presents that he was forthcoming with the appointing authority regarding this incident and he was not convicted for DUI. Instead, he received "Probation Before Judgment" for the charge of DWI, which he indicates is not a conviction of a crime under Maryland law. He indicates that he complied with the probation terms and his probation was terminated effective August 27, 2019. The appellant states that he did list four of the summonses related to the 2018 DUI and did not intentionally omit the fifth charge, DUI Per Se, from that incident as this charge was virtually identical to the Driving Vehicle While Under the Influence of Alcohol charge and he did submit a copy of the list of charges with his Background Investigation Questionnaire. The appellant explains that in November 2018, he had a few beers at a co-worker's new house boat and he believed sufficient time had passed when he left and that his ability to drive was not impaired. While driving on the highway, he saw that a vehicle struck another vehicle and he braked, but was unable to stop in time to avoid striking the vehicle that was stopped ahead of him. He emphasizes that this is the only motor vehicle accident he has been in, he did not receive any points on his New Jersey driver's license, and his New Jersey driver's license was not suspended. Further, the appellant states that the appointing authority never advised him that being arrested within the past five years was a disqualifying standard and he believes that he presented mitigating circumstances.

In reference to the 2015 incident, he explains that he was charged with civilian offenses and he did report these charges in response to a question on his application. The appellant states that the assailant, a Port Authority Police Sergeant, filed these charges against him as a ploy to avoid testifying at his trial. Additionally, the assailant faced disciplinary charges at work and the appellant was called as a witness. The appellant presents that he was participating in a charity flag football game involving the East Rutherford police team and the Port Authority police team, which involved both police and non-police members, and a donnybrook ensued at the end of the game. While exiting the game, the assailant punched him in the face, which led to the assailant's arrest and later, the assailant filed complaints against him. He reiterates that he disclosed on his application that he was accused of multiple charges from this incident, which were dismissed as there were no basis. Therefore, his response that he was called as a witness for this incident was true and accurate to the best of his knowledge. Further, he was unaware that the harassment charge filed against him for this incident was considered a disorderly person's offense. The appellant notes that he was not arrested nor brought to the police station for this incident. He indicates that he has petitioned the court to expunge his arrest record for this incident.

With respect to not disclosing the 2018 DUI charge, the appellant thought he was only being asked about in-state charges. He states that he fully described this accident in response to another question. Similarly, he inadvertently did not list the DUI Per Se charge; however, he did provide a copy of the listed charges with the

background investigation questionnaire. Concerning his W-2, the appellant indicates that he was asked to provide his last three W-2s, which he did for 2018, 2017 and 2016. He states that he has no recollection that he was asked to either provide his 2015 W-2 or, in the alternative, to provide a notarized statement explaining why he could not provide it. In reference to his alleged Maryland address, he explains that he works in Baltimore as a Fire Fighter. He works four days in a row and then has off. The appellant states that, while working, he either sleeps in the fire house or at co-worker's house and he lives at his permanent residence in Newark on his days off. The appellant indicates that the Maryland address that the fire department indicated on his 2016 W-2 was incorrect and he was unaware that it was using a Maryland address for him as his checks are direct deposited.

The appellant argues that there is no basis to remove his name from the list due to a civilian complaint that was dismissed and a DUI arrest that resulted in probation and not a conviction. He explains that there is no evidence that he committed any violent act concerning the 2015 incident. Regarding the 2018 DUI, he reiterates that he did not believe that his ability to drive was impaired and this is the only time he has been involved in a motor vehicle accident. He presents that he was 25 years old at the time of the incident and now he is 26. The appellant takes full responsibility for this one-time bad decision to drive while impaired by alcohol. He believes that he has demonstrated sufficient rehabilitation by promptly complying with the terms of his probation and he emphasizes that the Maryland Criminal Code clearly states that his probation sentence was not considered the conviction of a crime. The appellant submits character references from co-workers, friends and community members, which he asserts is relevant information to assess his suitability as a Fire Fighter.

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, presents that in 2018, the appellant had a blood alcohol content of .14, which is almost twice the legal limit in New Jersey, which led to his arrest in Maryland for DUI. Additionally, the appellant omitted that he was charged with aggravated assault, harassment and terroristic threats in 2015 and he omitted that he was charged with assault in 2016. Further, he failed to provide his 2015 tax return and he omitted his Maryland address that was listed on his 2016 tax return. It notes that during the time period that the appellant's background was investigated, he was still under probation for the 2018 DUI. The appointing authority argues that the appellant's DUI was a serious offense as driving while impaired is the cause for countless accidents and deaths. After drinking, the appellant could have used a driving service to take him home instead of making the poor choice to drive while intoxicated. Further, it contends that the incident took place approximately a year ago, when he was 25 years old and there has been insufficient time for the appellant to demonstrate that this incident was an isolated incident and rehabilitation. Moreover, he omitted his 2015 criminal charges and his answer that he was only summoned to testify as a witness concerning the 2015 incident and not

a defendant is misleading. While the appellant describes a one-sided account of the 2015 incident, his deliberate omission of criminal charges indicates that he was hiding facts. Also, he failed to provide 2015 tax documents and his 2016 W-2 indicated a Maryland address, which was not listed on his questionnaire. While the appellant states that he never provided his employer a Maryland address, the appointing authority states that it is unlikely that his employer just picked a random Maryland address for him. It argues that the appellant's character references are biased and should not carry any weight in the Civil Service Commission's (Commission) decision.

In response, the appellant reiterates that he pled guilty to "driving while impaired by alcohol" and he received probation for a two-year period, which in Maryland is not considered a crime. Further, he diligently completed the probation terms and was released from the program in eight months. The appellant argues that this arrest and subsequent probation should be examined in the full context of his background. Specifically, the background investigation revealed that his social media accounts revealed no suspicious activity, he is a registered voter in Newark, his three personal references all provided favorable statements, he carries no firearms and does not have a permit to carry firearms, the search of his fingerprints did not match any fingerprints in the State's database, he has a current driver's license and his driver's abstracts reveals no motor vehicle violations and no points within the past five years, he received his high school diploma in June 2011, and his employer history disclosure forms indicate that he is an outstanding employee. The appellant states that he did not deliberately omit any charges related to the 2015 incident and he reported these charges to the best of his understanding on Questions 31 and 34A on the application questionnaire. He also provided documentation concerning the dismissal of the charges during the background interview. The appellant certifies that he was asked to provide tax documentation for three years (2016, 2017 and 2018), which he did and that he was not asked to provide tax documentation for 2015. He provides documentation from his employer that the employer mistakenly put another person's Maryland address on his 2016 W-2. He emphasizes that he never lived in Maryland and has lived in Newark the entire time that he has worked in Maryland. The appellant argues that the appointing authority has admitted that his arrest for the 2018 DUI incident alone would not be disqualifying. He argues that the appointing authority's "hiring standards and disqualifications" should not be considered as he was not given all of these standards prior to completing his employment application. He highlights that the Commission has previously stated that it is not bound by an appointing authority's criteria and must decide each list removal on the basis of the record presented. The appellant presents that he is currently a successful Fire Fighter in Baltimore, has a desire to serve the Newark community, and wants to join his brother who is a Newark Fire Fighter.

CONCLUSION

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000). Moreover, there are no provisions in Civil Service law or rules that provide for the “automatic” removal of an eligible from a list.

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 Commission or designee may determine. 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).

Similar to participation in a pre-trial intervention program, which is neither a conviction nor an acquittal, Maryland’s “Probation Before Judgment” program is a supervisory treatment program to resolve charges without the risk of conviction. *See N.J.S.A.* 2C:43-13(d). *See also Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the probation program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. *See In the Matter of Clifton Gauthier, Rockaway Township*, _____ *N.J. Super.* _____ (App. Div. 2019). Furthermore, while an arrest is not an admission of guilt, it may

warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the probation program could still be properly considered in removing his name from the subject eligible list.

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:4-4.7(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.

The Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant.

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 had valid reasons to remove the appellant's name from the list. A review of the record indicates that the appellant was arrested for DUI in 2018. His blood alcohol content was .14 percent which, according to the Maryland Transportation Authority Police Alcohol Drug Influence Report, was nearly double the .083 percent standard. This was a serious offense as drinking and driving can cause tragic accidents, including death. Further, the appellant's explanation that he thought he was not impaired when he left to drive is not persuasive, especially considering how far over the legal limit he was. Moreover, the fact that the appellant pled guilty to an offense that was not considered a crime under Maryland law does not mean the appellant's arrest for this action cannot be considered in the removal of his name. *See Tharpe, supra.* Moreover, it does not mean that the Commission cannot consider the admitted to underlying drinking and driving, in determining whether the appellant's background is unsuitable for the position in question under *N.J.A.C.* 4A:4-4.7(a)1 in conjunction with *N.J.A.C.* 4A:4-6.1(a)6. Further, the appellant was 25 years old as the time this incident took place in 2018, which was after the August 31, 2015 closing date. Therefore, the Commission

finds that the appellant's recent adverse contact with law enforcement is relevant to the position sought, as such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Fire Fighter. The public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. *See In the Matter of Jose Rivera, III* (CSC, decided July 13, 2017). Additionally, this was the appellant's second recent negative interaction with the law as the appellant was charged with certain offenses while involved in a 2015 fracas after a charity softball game. While the appellant claims the he was an innocent victim, he was arrested and charged with offenses. Regardless, even if he was innocent concerning the 2015 incident, the one 2018 arrest is sufficient for removal. *See In the Matter of Juan Sosa* (CSC, decided November 23, 2016) and *In the Matter of Chase Spieker* (CSC, decided November 23, 2016). Finally, as the 2018 arrest was after the August 31, 2015 closing date for the subject examination, regardless of any personal or professional character references that he submits and his successful completion of the terms of his probation for DWI, there is insufficient time for him to demonstrate rehabilitation.

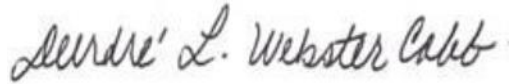
Additionally, the Commission finds that the appellant falsified his application. Specifically, while the appellant states that he was only charged with civilian complaints, regardless of the merits of the charges related to the 2015 incident, the appellant was a defendant who had been charged with either criminal or disorderly persons offenses and he did not fully disclose the severity of the charges that he faced. Even if there was no intent to deceive, in light of his subsequent negative interaction with the law and court system related to the 2018 DUI arrest, his failure to disclose the full nature of the charges against him from the 2015 incident was material. At minimum, the appointing authority needed this information to have a complete understanding of his background in order to properly evaluate his candidacy. The Commission notes, however, even if it did not find that he falsified his application, the 2018 DUI arrest alone would be sufficient to remove his name from the list for a background that is adverse to the position of Fire Fighter.

ORDER

Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Fire Fighter (M1556T), Newark eligible list.

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



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Stephen Ventura
Craig S. Gumpel, Esq.
Aondrette Williams
France Casseus, Assistant Corporation Counsel
Kelly Glenn