

Thereafter, the appellant contacted this agency in November 2019 to request that the matter be re-opened and this agency informed the parties that the matter was re-opened.

On appeal, the appellant asserts that he did not push a pregnant woman in the stomach. He submits his disposition letter from the East Orange Municipal Court which indicates that the simple assault charges against the appellant were dismissed. Additionally, the appellant submits a June 5, 2018 notarized statement from the alleged victim of the simple assault where the woman indicated that it was a very emotional time for her at the time of the incident as she was in the third trimester of the pregnancy of their son. She stated that although they had an intense verbal altercation, the appellant did not cause her any harm. She stated that the incident was a misunderstanding between the appellant and her. She further indicated that the appellant would not intentionally cause harm to her or anyone and, a couple of years after this altercation, she and the appellant got back in a relationship to raise their son.

Although given the opportunity, the appointing authority did not respond to this appeal.

CONCLUSION

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.

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. 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)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, it is initially noted that the appellant's pursuit of this appeal is untimely. After receipt of his original appeal, in a July 29, 2019 letter, this agency advised the appellant that his background was adverse to being a Fire Fighter for the above reasons and the matter would be closed. However, the record indicates that the appellant did not contact this agency's staff in response to that letter until November 2019. Therefore, the appellant did not request that this matter be re-opened until well after 20 days from when he was advised of the decision that this matter would be closed. See *N.J.A.C. 4A:2-1.1(b)*.

Regardless, even if the Commission was to consider this matter, the appointing authority had valid reasons for removing the appellant's name from the list for an unsatisfactory background. While the appellant claims that he did not engage in any behavior that is adverse to being a Fire Fighter, the record indicates that the appellant and the then-pregnant mother of his child engaged in such behavior where the parties felt the need to file criminal complaints or cross-complaints against each other due to an altercation. It is noted, as stated above, an expunged charge can still be considered adverse for a Fire Fighter candidate. Regardless, the appellant's expungement for this matter, as well as the statement from the alleged victim submitted in support of the expungement, were dated in 2018. Therefore, these documents were not relevant to the appointing authority's decision to remove the appellant's name from the list. Additionally, a review of the record indicates that the appellant was charged with 14 separate motor vehicle related violations, including two violations that took place after the August 31, 2015 closing date. Further, although the appellant was advised by this agency that his unsatisfactory driving record was one of the reasons that the appointing authority presented as grounds for his removal, the appellant provided no explanation as to why he has so many negative interactions with the law related to his driving and why he continued with such behavior after the closing date for his candidacy as a Fire Fighter. Moreover, the appellant has the burden of proof to demonstrate that driving is not essential to the position of being an Irvington Fire Fighter, and he has not presented such evidence.

See In the Matter of Patrick Farrell, Jr. (CSC, decided November 21, 2018) and *In the Matter of Paul Newman* (CSC, decided November 21, 2018).

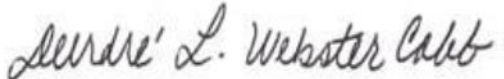
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Fire Fighter (M1540T), Irvington, eligible list.

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 15th DAY OF JANUARY, 2020



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