



STATE OF NEW JERSEY

In the Matter of Brian Clancy,
Sheriff's Officer (S9999R), Bergen
County Sheriff's Office

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

CSC Docket No. 2019-3363

List Removal Appeal

ISSUED: JANUARY 31, 2020 (SLK)

Brian Clancy, represented by Giovanna Giampa, Esq., appeals his removal from the eligible list for Sheriff's Officer (S9999R), Bergen County Sheriff's Office based on an unsatisfactory background report.

The appellant took the open competitive examination for Sheriff's Officer (S9999R), which had a September 4, 2013 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory background report. Specifically, the appointing authority's background report indicates that the appellant did not disclose that he was placed on "Academic Probation" while attending Western New England University and eventually received an "Academic Dismissal" in June 2000. Additionally, he indicated that he resigned his position as a dispatcher with the former Bergen County Police Department (BCPD) to take another job when the investigation revealed that his former supervisor made a formal request for the appellant's termination due to his poor work ethic and multiple disciplinary actions against him. Also, the appellant was terminated from his employment as a Security Officer with the Stockton University Police Department (Stockton) in August 2012 for violating departmental policies. It is noted that the appellant indicated that he resigned because he "did not pass the probationary or working test period" and stated that he did not have any disciplinary issues and never received anything less than satisfactory performance notices. Further, the appellant was terminated from his employment as a Rutgers University Police Officer (Rutgers)

in August 2015 for violating the department's written directives and he failed to disclose on his application certain verbal discipline that he received in this position. Finally, the appellant's driving record indicated numerous motor vehicle summonses and accidents between 1998 and May 2016, as well as his driver's license being suspended from September 2002 to March 2003.

On appeal, the appellant presents that his "Academic Probation" while attending Western New England University was not disclosed on his application because the college only initiated probation but never effectuated it as he withdrew from school prior to the start of the next semester in December 1999 and did not register for classes the semester he was supposed to be on probation in January 2000. He submits a document from the university to show that he withdrew. Therefore, the appellant claims he did not fail to disclose anything related to his time at Western New England University. Concerning the allegation that he did not resign from the BCPD as indicated on his application, but rather his former supervisor made a request to terminate him due to his poor work ethic and multiple disciplinary actions, he did not disclose his former supervisor's request because he had no knowledge of it. Additionally, the appellant signed his resignation from the BCPD to take a position in the Department of Public Works, which he disclosed. He asserts that he cannot be held liable for information that was never disclosed to him. The appellant submits a letter from his former supervisor, which states that the appellant was an excellent employee. With respect to the allegations that the appellant failed to disclose the reason for his termination from Stockton, the appellant disclosed that he was terminated based on failure to pass the working test period. However, the appellant contends that there were no disciplinary issues and he did not receive any performance notices, whether poor or favorable. In reference to the allegation that the appellant failed to disclose certain verbal discipline while employed as a Rutgers Police Officer, he indicates that he fully disclosed all of the information and details regarding his termination from Rutgers. Further, he states that he explained why those reasons were either false or exaggerated. The appellant argues that his termination from Rutgers cannot be used against him as he was not given due process as there was never any proceeding which verified and upheld the accusations. Finally, the appellant believes that his driving record should not be used against him as he currently has a valid driver's license, which is in good standing.

In response, the appointing authority, represented by Daniel E. Zwillenberg, Chief Counsel, relies on the background report.

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 Civil Service Commission (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)9, allows the Commission to remove an eligible's name from an eligible list for having a prior employment history which relates adversely to the title.

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

N.J.A.C. 4A:4-6.3(b) 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 this matter, the appointing authority had valid reasons for removing the appellant's name from the list. Specifically, the appellant has an adverse employment history based on the appellant's resignation from the BCPD, his termination from Stockton, and his termination from Rutgers. It is noted that his termination from Rutgers was in August 2015, which is after the September 4, 2013 closing date. While the appellant claims that he was not aware that his former supervisor with the BCPD requested the appellant's termination, he did not have any disciplinary issues with Stockton and the allegations by Rutgers against him were either false or exaggerated and his termination was without due process, at minimum, the appellant has been unable to maintain long-term employment with multiple law enforcement organizations. Therefore, it was appropriate for the appointing authority to conclude that the appellant's employment background was not suitable for a position as a Sheriff's Officer.

Additionally, the appellant's driving record indicates numerous motor vehicle summonses and accidents between 1998 and May 2016, as well as his driver's license being suspended from September 2002 to March 2003. The appellant argues that since his driver's license is currently in good standing his driving record should not be used as a basis for his removal. In this regard, the appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Sheriff's Officer. These motor vehicle incidents evidence disregard for the motor vehicle laws and the exercise of poor judgment. The appellant has offered no substantive explanation for these incidents. While the Commission is mindful of the appellant's recent attempts to remedy his driving record, it is clear that the appellant's driving record shows a pattern of disregard for

the law and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a position as a Sheriff's Officer, a law enforcement employee. *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 Sheriff's Officers to present a personal background that exhibits respect for the law and rules.

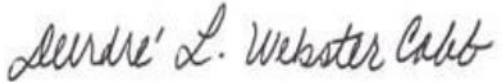
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Sheriff's Officer (S9999R), Bergen County Sheriff's Office eligible list.

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 29th DAY OF JANUARY, 2020



Deirdre 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: Brian Clancy
Giovanna Giampa, Esq.
Anthony Cureton, Sheriff
Daniel E. Zwillenberg, Chief Counsel
Kelly Glenn