

appellant presents that he relied upon the expungement order and information from the State Police when he answered questions on his application. He now realizes that charges from Newark were inadvertently not included on his expungement order, but he states that he would not have noticed this mistake made by the Essex County Prosecutor's Office. The appellant represents that he has been employed by the appointing authority for 19 years and currently works as a Public Safety Telecommunicator in the Fire Department. The appellant refutes the supposed claim that his records indicate that he was born in Mexico and raised in Arizona as he was born in Newark in 1978. He attaches his expungement order and birth certificate.

Although provided the opportunity, the appointing authority did not submit any additional information or argument for the Civil Service Commission (Commission) to review. A review of the information that the appointing authority submitted to Agency Services indicates that it requested to remove the appellant's name from the certification because he was arrested on multiple occasions and charged with various violations. Further, the appellant was found guilty of Simple Assault in January 2002. Moreover, a review of his Certified Driver Abstract indicates numerous Motor Vehicle violations including a history of having his driver's license suspended.

CONCLUSION

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 employment 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 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)6, allows the Civil Service 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.

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.

The primary inquiry regarding the removal of a candidate's name based on the falsification of his or her employment application 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. See *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003).

In this matter, a thorough review of the record indicates that the appellant's removal from the (M2554M) eligible list for Fire Fighter is not warranted. In this case, the appellant has explained the circumstances behind his responses on the employment application, which have not been refuted by the appointing authority. Further, the appellant has been employed by the appointing authority for many years, putting it in the unique position to be intimately familiar with the appellant's background. With this in mind, the fact that the appointing authority did not respond to refute his assertions on appeal is significant.

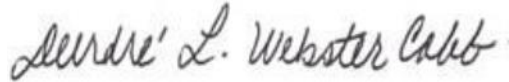
With respect to the appellant's background, the Commission is mindful of the high standards that are placed upon Fire Fighters. See *Karins v. City of Atlantic City*, 152 *N.J.* 532, 552 (1998). However, taking into consideration that the appellant's last conviction was for Simple Assault in January 2002 and the appointing authority did not respond to this appeal, there is also an insufficient basis to remove his name from list on the basis of an unsatisfactory criminal background. Nevertheless, the appellant's background does provide a basis for which the appointing authority can bypass him on certification OL151503 without creating a "Rule of Three" violation.

ORDER

Therefore, it is ordered that Carlos Archo's appeal be granted but his name on certification OL151503 be recorded as bypassed.

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



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries

and
Correspondence

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

c: Carlos Arocho
Bette R. Grayson, Esq.
Aondrette Williams
Kenyatta Stewart, Corporation Counsel
Kelly Glenn