

points. He explains that he was in a rush to get to the pharmacy to obtain medicine for his daughter, and in that rush, he turned into a no turning zone. The appellant acknowledges that this is no excuse for him breaking the law, but states that this was the reality of his day at that time as he was just trying to get to the pharmacy as his child was sick. Additionally, he questions why he was removed from the list for an unsatisfactory driving record as he has an active driver's license. The appellant asserts that a commercial driver's license (CDL) is only mandatory to drive fire trucks and not to work for the department. He also notes that due to his age, this is his last time to try to obtain a position as a Fire Fighter and states that he wants nothing more than to be a Jersey City Fire Fighter.

In response, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, relies on its background report.

In reply, the appellant further explains his past driving record and how he has matured. He highlights that he has only accumulated two points on his driving record in the past three years and those points have been credited back due to his safe driving. He requests that he not be punished for his past decisions when he was much younger and describes how passionate he is to become a Jersey City Fire Fighter. He submits letters of reference from Fire Fighters and law enforcement officers in support of his appeal.

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 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 this matter, although the appellant acknowledges that he has a poor driving history, including a recent motor vehicle infraction which occurred after the August 31, 2018 closing date, a driving record does not provide evidence of inability to perform the duties of a Fire Fighter in the way a poor driving record may evidence a disrespect for the law adversely affecting a Police Officer's ability to perform his or her duties. *See In the Matter of John Rispoli*, Docket No. A-6849-97T3 (App. Div. December 2, 1999). On appeal, the appellant questions why his name has been removed from the eligible list as he claims that a CDL is not required to be a Jersey City Fire Fighter and there has been no indication that the ability to drive a fire truck

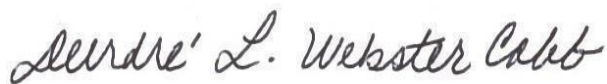
is a requirement for the position. Although the appointing authority responded to the appeal by presenting its background investigation on the appellant, it did not address the issue as to whether the subject position will require driving. Therefore, the Civil Service Commission (Commission) finds that there is no basis to remove the appellant's name from the subject list. However, while the Commission appreciates the efforts that the appellant has made in more recent times to improve his driving record, this record is clearly sufficient for the appointing authority, in its discretion under the "Rule of Three" contained in *N.J.A.C. 4A:4-4.8*, to bypass the appellant's name for appointment.¹ Accordingly, the Commission orders that the appellant's name be reflected as bypassed on the subject certification, and emphasizes that, regardless of whether the position sought is in law enforcement, having a good driving history is an important function for a public safety position that may require a driver's license. See *In the Matter of Ray Lee* (CSC, decided April 18, 2018).

ORDER

Therefore, it is ordered that this appeal be granted, but the appellant's name be recorded as bypassed on certification

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 4TH DAY OF NOVEMBER 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

¹ A review of certification OL191437 indicates that the appointing authority only bypassed one candidate. As such, under the Rule of Three, the appointing authority could have bypassed the appellant's name on the subject certification.

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