



STATE OF NEW JERSEY

In the Matter of Matthew Franklin,
Fire Fighter (M1816W), East Orange

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

CSC Docket No. 2020-2668

List Removal Appeal

ISSUED: SEPTEMBER 18, 2020 (SLK)

Matthew Franklin appeals the decision to remove his name from the Fire Fighter (M1816W), East Orange eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Fire Fighter (M1816W), which had an August 31, 2018 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, its background report indicated that the appellant was convicted for possession of marijuana with intent to distribute one-half to five pounds in Virginia in 2007 and again in 2010. Additionally, the report stated that the appellant was arrested for Driving While Intoxicated in New York in 2009. Further, the report indicated that the appellant had multiple Failures to Appear warrant arrests in East Orange for traffic violations and Virginia for probation violations between 2010 and 2011. The report also noted that the appellant had many motor vehicle moving violations and parking tickets between 2006 to 2015 and his driver's license was suspended eight times between 2005 and 2013. Finally, the report indicated that he was involved in a motor vehicle accident in January 2019 and there were no pending violations.¹

¹ As the appointing authority did not respond to the appeal, there is no evidence in the record that the appellant ever received a copy of the background report.

On appeal, the appellant explains that in February 2007, he was driving when he was pulled over for not making a complete stop at a stop sign. He presents that at that time, he was 20 years old, working, attending school, just had a newborn baby and was suffering from chronic back pain because of an auto accident that took place two years prior. The appellant states that he was under a lot of stress, and rather than getting professional help, he self-medicated with marijuana for pain relief. He presents that although he never distributed marijuana, because he had an ounce, he was charged with Possession with Intent to Distribute Marijuana. The appellant states the because he was afraid of the sentence, he took a plea deal, which was four years of probation. He also acknowledges that he was given a summons for possession of marijuana in Virginia in 2006, but states that there have been no other drug charges. The appellant states that his last police contact was in November 2011 where he was pulled over for being on the phone while driving. He indicates that he then learned that he had a violation of probation from Virginia although Virginia had not notified him nor the Essex County Probation Office during his probation. The appellant presents that the violation was for Driving While Intoxicated violation occurred on the toughest day of his life when his grandmother passed away. The appellant admits he made past mistakes. He presents that he is now 35 years old and this is his last chance to be a Fire Fighter. The appellant indicates that he has rehabilitated his life by working in a hospital for the past five years, improving his credit score and surrounding himself with upstanding citizens.

Although given the opportunity, the appointing authority has not responded to this 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 Commission to remove an eligible's name from an employment list for other sufficient reasons.

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 disposing the certification, the appointing authority provided the appellant's criminal history report indicating that his last adverse encounter with the law was in 2010. Additionally, although he had numerous motor vehicle violations between 2005 and 2014, a review of his motor vehicle abstract from 2014 to 2019 do not reveal any violations. As such, the incidents in question are not recent but could provide the basis to bypass his name on the certification. Further, the appellant has provided evidence of rehabilitation which has not been rebutted by the appointing authority.

Under these circumstances, the appellant's name should be restored to the subject list for prospective employment opportunities only.

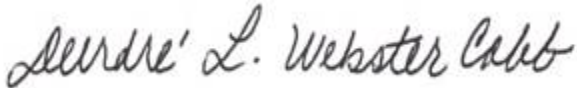
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient cause for removing his name from the Fire Fighter (M1816W), East Orange, eligible list.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the Fire Fighter (M1816W), East Orange eligible list, for prospective employment opportunities only.

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 DAY 16th OF SEPTEMBER, 2020



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