



STATE OF NEW JERSEY

In the Matter of Zachary Mayo,
Fire Fighter (M1840W), Irvington

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

CSC Docket No. 2021-349

List Removal

ISSUED: FEBRUARY 23, 2021 (JET)

Zachary Mayo, represented by Damon McDougal, Esq., appeals the removal of his name from the Fire Fighter (M1840W), Irvington, eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Fire Fighter (M1840W), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on August 1, 2019 (OL190904 certification). In disposing of the certification, the appointing authority alleged that on February 2, 2018 in Broward County, Florida, the appellant was arrested and charged with Possession of a Controlled Dangerous Substance (CDS) - Cannabis in excess of 20 grams - in violation of F.S. 893.03(1)(c)7 and F.S. 893.13(6)(a) (L1) (dismissed), and with Unlawfully Using or Possessing with Intent to Use Drug Paraphernalia including scales to weigh a Controlled Dangerous Substance in violation of F.S. 893.147(1)(a) (dismissed). On April 12, 2019, the Broward County circuit court ordered the appellant to complete a diversionary program, which the appellant completed. Additionally, the appointing authority submitted a copy of the appellant's driving record, which indicates that he had several motor vehicle infractions from 2016 to 2018.

On appeal, the appellant asserts that he is in process of having the charges against him expunged.¹ The appellant maintains that the appointing authority's

¹ It is noted that the appellant's Florida attorney, by letter dated September 11, 2019, indicated that the appellant was pursuing an expungement of the charges. No further updates were supplied.

removal of his name from the list was unreasonable, as the charges against him were the result of an isolated incident. The appellant explains that the charges were dismissed as he participated in the diversionary program. Further, the appellant contends that the 2018 incident does not show that he will involve himself in similar behavior, and he now asks for a second chance at an opportunity for an appointment to the subject position. The appellant contends that the arrest does not adversely relate to the employment sought, as he is able to perform the duties of a Fire Fighter.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)(4), provides 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. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Civil Service Commission (Commission) must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relate to the position of Fire Fighter. 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, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment 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, supra*.

Participation in a diversionary program is neither a conviction nor an acquittal. See *N.J.S.A.* 2C:43-13(d). See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the

prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his or her name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI). Moreover, pursuant to *N.J.S.A. 2C:36A-1*, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. *See State v. Marzolf*, 79 *N.J.* 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's arrest could still be properly considered in removing her name from the subject eligible list.

In this matter, the appellant's 2018 arrest in Florida clearly adversely relates to the employment sought. The appellant argues in this matter that the 2018 arrest was the result of an isolated incident. However, the appellant has not provided any substantive evidence in this matter to show that the charges have been expunged. Moreover, although the appellant completed the diversionary program, the appointing authority could still consider the underlying charges and arrest in consideration of his appointment to the subject position. Although the arrest appears to have been an isolated incident, the appellant has not provided a sufficient explanation regarding his involvement in the incident. Further, the appellant was an adult at the time the incident occurred, and it cannot be ignored that he was arrested only one year and six months prior to when his name was certified on the subject list. Clearly, recent nature of this incident provides insufficient time for the appellant to demonstrate rehabilitation. Moreover, the removal of eligibles from Fire Fighter lists on the basis of adverse criminal records have been upheld. *See In the Matter of James Alessio* (MSB, decided March 9, 1999). As such, the appellant's 2018 arrest in Florida provides sufficient cause to remove his name from the eligible list. In *Karins v. City of Atlantic City*, 152 *N.J.* 532, 552 (1998) the Supreme Court stated:

Firefighters are not only entrusted with the duty to fight fire; they must also be able to work with the general public and other municipal employees, especially police officers, because

the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship places at risk the citizens of the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police departments at a fire.

In this matter, the appellant's adverse background information pertaining to the 2018 criminal charges and arrest are relevant to the position sought, as such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Fire Fighter. As noted above, the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. Accordingly, the appointing authority has presented sufficient cause to remove the appellant's 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 17TH DAY OF FEBRUARY, 2021

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