



STATE OF NEW JERSEY

In the Matter of Highlander
Castaneda, Police Officer (S9999A),
Linden

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

CSC Docket No. 2021-620

List Removal Appeal

ISSUED: SEPTEMBER 7, 2021 (JET)

Highlander Castaneda appeals the removal of his name from the Police Officer (S9999A), Linden eligible list on the basis of an unsatisfactory background report.

The appellant, a disabled veteran, took the open competitive examination for Police Officer (S9999A), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 20, 2020 (OL200476). In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory background report. Specifically, the appointing authority asserted that on August 30, 2015, the Linden Police responded to a noise complaint on two occasions at the appellant's residence, and the appellant at the time of the incident refused to provide identification and behaved in a standoffish manner. The appointing authority asserted that on September 11, 2016, the Linden Police responded to a noise complaint, and a summons was issued to the appellant for a violation of a local noise ordinance for which he was found guilty. The appointing authority asserted that on April 26, 2016, the Linden Police served a domestic violence warrant to the appellant that was issued by the Carteret Police Department, and the appellant was charged with Simple Assault in violation of *N.J.S.A. 2C:12:1a* (dismissed), Criminal Mischief in violation of *N.J.S.A. 2C:17-3* (dismissed), and Domestic Violence in violation of *N.J.S.A. 2C:25-21* (dismissed). Specifically, the appointing authority alleged that on April 21, 2019, the Carteret Police responded to a domestic violence complaint involving the appellant and his

ex-girlfriend, and a Temporary Restraining Order (TRO) was issued against the appellant which was dismissed.¹

On appeal, the appellant asserts that he is not guilty of any criminal offenses, and the only infractions in his background consist of a traffic violation and a noise complaint. The appellant states that at the time of the 2015 incident, he was preparing to be deployed to Afghanistan when the police appeared at his home. The appellant maintains that the police were rude to him and inaccurately reported that it was the second time that they appeared at his residence. The appellant adds that he is confused about the incident, since he has not had the opportunity to review the police report. The appellant also contends that he was deployed in Afghanistan at the time that the 2016 summons was issued for the noise infraction, and there does not appear to be any records indicating that he was involved in the incident.² The appellant asserts that, with respect to the 2019 incident, he was not charged with Simple Assault or Criminal Mischief,³ and the transcripts from the TRO matter indicate that the individual who filed for the TRO was not truthful. The appellant explains that he is now serving as a federal Police Officer and he has saved lives while serving in the military. In this regard, the appellant asserts that he served in Operation Iraqi Freedom in the Middle East, and completed numerous law enforcement missions. The appellant adds that the federal government conducted several background checks prior to his assignments, and he was issued a security clearance. In this regard, the appellant contends that if his background was considered unsatisfactory, then he would not have been able to obtain the level of security clearance that he has achieved. The appellant explains that, as a result of his service as a federal Police Officer, he is now aware of the duties that law enforcement officers perform, and such knowledge has assisted him with positively changing his behavior. The appellant states that he regrets his prior behavior, and he maintains that he would be an appropriate candidate for the subject Police Officer position.

In response, the appointing authority relies on the documentation it submitted with respect to the removal. It does not provide any other arguments or information in response to the appeal.

¹ The record reflects that the appellant was serving as a federal Police Officer at the time the 2019 incident occurred.

² As noted above, the record reflects that the police responded to noise complaints at the appellant's home in 2015 and in 2016, and in 2016 a summons was issued for a violation of a local noise ordinance. The record indicates that, at the time of the 2016 incident, the appellant stated, "You can't issue me a summons, I just got back from Afghanistan."

³ As noted above, the April 21, 2019 arrest report indicates that the appellant was charged with Simple Assault, Criminal Mischief, and Domestic Violence. Additionally, the record reflects an April 28, 2019 police report indicating that a warrant was issued for the appellant's arrest and that the appellant would be served with the TRO.

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 Police Officer. 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.

Additionally, *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 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 an appointment.

In this matter, it is clear that the appellant's 2019 arrest and charges adversely relate to the employment sought. The record reflects that in 2019, the appellant was charged with Simple Assault, Criminal Mischief, and Domestic Violence, and a TRO was issued against him. Although the 2019 charges and the TRO against the appellant were dismissed, and he states that the individual who filed the charges was untruthful, he did not provide a sufficient explanation with respect to his involvement in the charges. Pursuant to the above listed rules, the appointing authority has the ability to consider arrests unsupported by convictions when considering candidates for law enforcement positions. Although the appellant argues that he has learned from his mistakes and his military and service as a federal Police Officer make him a good candidate for the subject position, he was an

adult at the time the incidents occurred and the infractions were not limited to one isolated incident. Additionally, he applied for the subject examination only four months after the most recent charges, and his name was certified on the subject list a little over one year after his 2019 arrest. As such, not enough time has elapsed to show that he has been rehabilitated. Additionally, the appellant's involvement in the 2015 and 2016 noise infractions cannot be ignored, and the appointing authority was authorized to review such background information to determine the appellant's suitability for employment. The incidents the appellant was involved with show a pattern or disregard for the law which is unacceptable for an individual applying for a law enforcement position.

The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of public employee. The primary focus of a Police Officer is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *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).

Accordingly, it is clear from the record that the appellant's record negatively reflects on his suitability for the position at issue. The appellant's background demonstrates qualities that are unacceptable for an individual seeking a position as a municipal Police Officer. Accordingly, based on the evidence presented in the record, the appellant's unsatisfactory background report constitutes sufficient cause to remove his name from the eligible list for Police Officer (S9999A), Linden.

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 1ST DAY OF SEPTEMBER, 2021

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