



B-07

STATE OF NEW JERSEY

In the Matter of Christopher Dunlap,
Fire Fighter (M1838W),
Township of Hillside

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

CSC Docket No. 2021-1818

List Removal Appeal

ISSUED: SEPTEMBER 7, 2021 (JET)

Christopher Dunlap, represented by Bette R. Grayson, Esq., appeals the removal of his name from the Fire Fighter (M1838W), Township of Hillside, eligible list on the basis of falsification of the employment application.

The appellant took the open competitive examination for Fire Fighter (M1838T),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on December 4, 2020 (OL200942 certification). In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of falsification of the employment application. Specifically, the appointing authority indicated that the narrative the appellant provided in response to the questions on the employment application pertaining to his juvenile arrest history differed from the statements he provided in the police report.² Specifically, in response to question #2

¹ The subject list expired on March 28, 2021.

² The police report indicated that, "While on patrol . . . HQ advised units in the field that there was male inside the school with a weapon. Det. Wilson who was already at Hillside High School on an unrelated investigation responded to the front lobby. As he arrived in the lobby, he observed [the appellant] arrested [and] wrestling with Vice Principal Rotando and Security Officer, Melvin Fitzgerald. As Det. Wilson approached [the appellant], Mr. Rotando advised him that [the appellant] had a knife in his possession. Det. Wilson immediately recovered an approximate 3 inch bladed 'buck'

on the employment application, “Have you ever been arrested for or charged with Juvenile Delinquency [and if so] provide complete details with dates, age at time of offense, violation type, location and disposition, the appellant indicated “yes” and “October 20, 2006, 17 years old, possession of weapon for unlawful purpose, Hillside High School, community service, DNA testing ordered.” The appellant further indicated in response to question #2, “fingerprinting ordered, write a letter and forfeit weapon.”³ In response to question #3 on the employment application, “Have you ever been arrested for, indicated for, convicted or any violation of the criminal law, and if so, provide complete details with dates, age at time of offense, violation type, location, and disposition,” the appellant indicated, “Juvenile arrest reference answer to [question] #2.” The appointing authority also stated that the appellant failed to disclose that he was charged as a juvenile with Resisting Arrest.

The record reflects that in January 2007, the appellant was charged as a juvenile with Resisting Arrest by Using Threats and Force in violation of *N.J.S.A. 2C:29-2a* (dismissed); Firearms/Weapons in Educational Institution in violation of *N.J.S.A. 2C:39-5E(2)* (dismissed); Aggravated Assault Against a Law Enforcement Officer in violation of *N.J.S.A. 2C:12-18(5)(a)* (dismissed); Possession of a Weapon for Unlawful Purpose – Other Weapon in violation of *N.J.S.A. 2C:39-4d*, for which he was found guilty, paid a fine, and completed probation; and in August 2007 he was charged with Violating Probation in violation of *N.J.S.A. 2C:45-3* (dismissed). The appointing authority also provided the appellant’s driver history abstract, which reflects various infractions including Delaying Traffic on January 25, 2018, Involvement in a Car Accident – Police Report on July 4, 2019 and on May 17, 2018, and Speeding on January 16, 2020.

On appeal, the appellant asserts that he was arrested as a juvenile for having a pocket knife at school, which he used to help his uncle to open boxes,⁴ and he did

bi-fold knife with wooden handle with brass ends from [the appellant’s] right front jacket pocket. The report also indicated that the appellant flailed his arms and preventing Det. Wilson from arresting him, and attempted to flee the school, resisted arrest and yelled ‘get the fuck off me.’ ” The police report further indicated that prior to the incident, a female student removed the knife from the appellant’s jacket and it fell to the floor, at which point the appellant picked the knife up and put it back in his jacket.”

³ The appellant further indicated in response to question #2, “On Monday, October 30, 2006, my pocket knife which I use on the weekends to help my uncle open boxes on his trucking route fell out of my pocket. The security guard by the name of Melvin witnessed the knife fall and his response was ‘come on, let’s go in the office, you are getting in trouble.’ ” The appellant added that, “Being as though school was already let out I was attempting to leave the building. Melvin tried to detain me with the help of Detective Wilson. I was pinned to the ground and hand cuffed. It was an honest mistake, I forgot it was still in my pocket. It was not a regular occurrence for me to carry a knife. Although it was classified as a weapon my reasons for carrying a pocket knife was never supported by thoughts of trying to cause harm or violence to anyone. As a child who had just lost his mother and no father present, working on the weekends with my uncle was very imperative to my survival. Trying to juggle being an employee, a student, and an athlete it slipped my mind and I truly forgot it was in my pocket.

⁴ The appellant explains that he was required to work with his uncle as his mother had passed away and his grandmother whom he was living with at the time was in poor health. The appellant states

not have any intention of bringing the knife to school with him on the date of the incident. The appellant states that the appointing authority informed him that the 2007 incident would not prevent him from consideration for an appointment as a Fire Fighter. The appellant adds that he is still interested in the subject position, and he has not been involved with similar infractions since that time, and he should not continue to be punished for an isolated incident that occurred 15 years ago.

In response, the appointing authority, represented by Kenneth B. Goodman, Esq., maintains that the appellant failed to disclose on the employment application that he was charged as a juvenile with Resisting Arrest, and the narrative the appellant submitted in his employment application with respect to the juvenile charges is inconsistent with the information obtained from the background report. The appointing authority explains that the police report differs from the information provided in the appellant's employment application. The appointing authority contends that, since the appellant did not provide full details of the juvenile incident in the employment application, it is clear that he falsified the employment application. The appointing authority maintains that such information was material and should have been disclosed.

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.

that his uncle gave him the pocket knife to assist with the work they were performing. The appellant maintains that he accidentally brought the knife to school with him, and his girlfriend obtained the knife from his pocket and dropped it on the ground in front of the security guard. The appellant states that, although he became upset, it was because he was concerned about how the incident would affect his grandmother's health.

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*.

Further, it is well established that municipal police departments may maintain record pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). *N.J.S.A. 2A:4A:-48* provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision.

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 Commission to remove an individual from an eligible 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:4-4.7(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 appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer.⁵ See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998); *In the Matter of Yolanda Colson*, Correction Officer Recruit (S9999A),

⁵ It is noted that Fire Fighter is not considered a law enforcement title. Nevertheless, an unsatisfactory driving record is sufficient cause for removal from a Fire Fighter eligible list where an appointing authority establishes that driving is an essential function of the position.

Department of Corrections, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003).

Initially, the appointing authority has not provided any substantive information in this matter to show that the appellant provided a false statement of material fact. The Commission is satisfied that the appellant provided sufficient information in response to questions #2 and #3 on the employment application that would enable the appointing authority to properly complete the appellant's background investigation. Although the police report contains additional information, the appointing authority was able to obtain the police report based on the information the appellant provided on the employment application. As such, the Commission is not convinced that the appellant provided a false statement of material fact with respect to the information pertaining to the 2007 charges that he listed on the employment application.

In this matter, the record reflects that the appellant was arrested as a juvenile in 2007, charged and found guilty of Possession of a Weapon for an Unlawful Purpose. Although the incident occurred when the appellant was a juvenile, the appointing authority could consider the incident as a part of its background check pursuant to the above listed rules in order to determine the appellant's suitability for employment. However, the incident having occurred 14 years ago is remote in time, and as such, sufficient time has elapsed to establish that the appellant has been rehabilitated. Additionally, the incident was an isolated incident, as the appellant has not been involved in any other incidents since that time. Given the amount of time that has passed and the lack of additional infractions since that time, the appellant has established his contentions in this matter and should be restored to the list. With respect to the appellant's motor vehicle history, although the most recent driving infraction occurred in January 2020 and the appellant has not explained his involvement with the infractions, such information is not an impediment to his ability to perform the duties of a Fire Fighter. Moreover, even if the appointing authority established that driving was an essential function of the position, the appellant's driving record is not so egregious to warrant removal from the list. Accordingly, the Commission finds that the appellant's name should be restored to the subject list.

ORDER

Therefore, it is ordered that this appeal be granted and the list for Fire Fighter (M1838W), Township of Hillside be revived, and the appellant's name certified at the time of the next certification 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 1ST DAY OF SEPTEMBER, 2021

Deirdre' L. Webster Cobb

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