



**STATE OF NEW JERSEY**

In the Matter of Albert Gonzalez, Jr.,  
Fire Fighter (M1844W), Jersey City

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

CSC Docket No. 2021-1884

List Removal Appeal

**ISSUED: SEPTEMBER 24, 2021**  
**(SLK)**

Albert Gonzalez, Jr., represented by Marc A. Calello, Esq., appeals the decision to remove his name from the Fire Fighter (M1844W), Jersey City eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Fire Fighter (M1844W), Jersey City, which had an August 31, 2018 closing date, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified (OL210053) and he was ranked as the 243<sup>rd</sup> candidate. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory background report.

On appeal, the appellant states that he read and understands the Civil Service Commission's (Commission) November 21, 2018 decision where his appeal of his removal from the Fire Fighter (M1544T), Jersey City eligible list for an unsatisfactory background report was denied. However, he appeals the present matter on additional and separate grounds. The appellant asserts that his arrest by the Point Pleasant Beach Police in 2010 for impersonating an officer should not be considered as prior adverse behavior and does not rise to the level of an offense that should disqualify him from becoming a Fire Fighter. Also, the appellant indicates that the allegation against him by the Jersey City Police Department, that he concealed information from supervisors which led to his removal as a Police Officer in 2009, which was the

cornerstone of the Commission's prior decision, occurred while he was under arrest/indictment with retained counsel. The appellant asserts that he maintained his innocence throughout the entire process, when on November 28, 2008, the alleged victim recanted his accusation and all charges against him were dismissed. He presents that his counsel's advice was that he should exercise his Fifth Amendment Constitutional right to remain silent. Therefore, he argues that the Commission erred in considering this as part of its prior decision. The appellant states that simply submitting paper documentation does not provide an accurate and fair picture of him. He indicates that he is ready, willing and able to explain his history including past actions, employment, the circumstances, and how he is qualified and contends that he was never given a fair opportunity to become reinstated as a Jersey City Police Officer to serve the public. Therefore, he requests that this matter be transmitted to the Office of Administrative Law for a hearing.

The appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, presents that the appellant was removed from the subject list because he has an unsatisfactory employment history with Jersey City and in the private sector, and he was also arrested for impersonating an officer. It notes that he previously appealed his removal from a prior Jersey City Fire Fighter list, which was denied, and the rationale for removing him again is largely the same. The appointing authority indicates that on November 10, 2009, the appellant received a Final Notice of Disciplinary Actions (FNDA) removing him as a Jersey City Police Officer and he did not appeal his removal. Regarding the incident in question, the appellant failed to notify the Jersey City Police Department concerning his knowledge of a stabbing. Although he was present during the stabbing, he denied any knowledge to the Department's senior executive team. Thereafter, the appellant posted internet images of himself flashing hand signs of a known street gang.

Referring to the appellant's Fifth Amendment argument, the appointing authority reiterates that the appellant failed to appeal his removal. Therefore, his time to appeal his termination tolled 12 years ago. It asserts that the appellant could have made this argument 12 years ago, and he does not have the option to ignore the time to appeal under Civil Service regulations. Moreover, the appointing authority contends that giving patently false information to a Police Chief and Captain is not protected under the Fifth Amendment. Additionally, regarding the appellant's August 2010 arrest, even if it has been expunged, the appointing authority has the same concerns expressed in the prior case. It asserts that the appellant has cited no authority that his arrest should not be considered as prior adverse behavior that does not rise to the level of disqualification. While the appellant argues that a hearing is needed to present a fair picture of his background, he has the burden of proof and the paper documentation does paint a clear picture of who he is. The appointing authority argues that the appellant's arrest is part of his pattern of poor decision-making skills in dealing with the police profession truthfully and his arrest may be considered in evaluating his suitability to be a Fire Fighter. It indicates that the appellant informed Point Pleasant Beach Police Officers that he was a Police Officer

when he had not been one since the previous year. Therefore, the appointing authority argues that his arrest, even without conviction, contains information that is adverse to being a Fire Fighter. Moreover, it would have been derelict in its duty to not address the appellant's arrest and the facts surrounding it. The appointing authority cites case law to indicate that an arrest can be considered adverse to being a Fire Fighter even if one is not convicted of a crime. It emphasizes that the appellant's documented inability to be untruthful, including providing false information to police authorities, reveals he is not suited for being a Fire Fighter.

### CONCLUSION

*N.J.A.C.* 4A:2-1.1(d) provides that except where a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. For the reasons set forth below, a hearing is not required in this matter.

*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.

*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, the appointing authority's background report indicates that while serving as a Jersey City Police Officer, the appellant was charged with conduct unbecoming a public employee and violating various department rules. The charges initiated from a victim of a stabbing identifying the appellant as being in a large street fight the month before he started the Police Academy where the victim was stabbed nine times. Further, the investigation of the incident uncovered multiple social media images of the appellant displaying criminal gang signs and activity. Although the indictment against the appellant was dismissed and his record expunged, the administrative charges against him were sustained and his removal was effective November 10, 2009. It is noted that even expunged records can be grounds to remove a candidate from a Fire Fighter eligible list if the arrest is adversely related to the position sought. *See Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). Additionally, although the appellant was advised in his FNDA that he had 20 days to appeal his removal to the Commission, he did not. The appellant now claims his innocence and he was exercising his constitutional Fifth Amendment Right to remain silent on the advice of counsel, which is why he did not disclose his knowledge of the stabbing to his

superiors. He also asserts that he was never given a fair opportunity to be reinstated as a Jersey City Police Officer. Therefore, he now requests an opportunity for a hearing to explain his past actions, employment, circumstances, and how he is qualified to have symbiotic relationship with local police as well as citizens and asserts that paper documentation does not provide an accurate and fair picture of him. However, as the appellant had an opportunity for a hearing in 2009, but failed to exercise his rights in the allotted time, his request is devoid of merit and this matter shall be determined based on the written record.<sup>1</sup> See *N.J.A.C. 4A:2-2.8(a)* and *N.J.A.C. 4A:2-1.1(d)*. Moreover, there is no basis for the Commission not to consider the appellant's removal as a Jersey City Police Officer as anything other than justified. Additionally, it is noted that even though the appellant's major disciplinary history with the appointing authority is remote in time, it can be sufficient to remove him for an open competitive examination with the same appointing authority. See *In the Matter of Paul Kleinschmidt* (CSC, decided October 3, 2018).

Further, the background report indicates that in August 2010, the appellant was arrested for impersonating an officer. Specifically, the appellant was questioned by the Point Pleasant Beach Police while it responded to a verbal dispute and noticed the appellant urinating in bushes. In response to police questioning, he indicated that he was a Jersey City Police Officer. However, after the Point Pleasant Beach Police investigated, it discovered that the appellant was no longer a Jersey City Police Officer as he had previously been terminated. Thereafter, the appellant was charged with impersonating an officer, which led to him pleading guilty to an amended charge of disorderly conduct and paying a fine.<sup>2</sup> The appellant argues that this arrest should not be considered as prior adverse behavior and does not rise to the level of an offense that would disqualify him from becoming a Fire Fighter. However, it is noted that 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. See *In Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998). Additionally, an arrest may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. See *Tharpe, supra*. Further, a disorderly persons offense can reflect upon one's character and ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002).

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<sup>1</sup> The Commission notes that under *N.J.A.C. 4A:4-6.1(a)5*, the appellant's prior removal from public employment, by itself, can serve as a reason for removal from a list.

<sup>2</sup> This was indicated in the appellant's prior list removal appeal for a position as a Jersey City Fire Fighter on a prior examination. The appeal was denied. See *In the Matter of Albert Gonzalez, Jr.* (CSC, decided November 21, 2018).

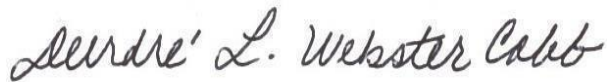
Finally, the appellant has not presented any evidence of rehabilitation. In fact, the appointing authority's background report indicates that the appellant was terminated from Amazon in October 2017, which is less than one year prior to the August 31, 2018 closing date.<sup>3</sup> Accordingly, in reviewing the totality of the appellant's background, the appointing authority had legitimate reasons to remove the appellant's name from the Fire Fighter (M1844W), Jersey City 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 22 DAY OF SEPTEMBER, 2021




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<sup>3</sup> *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought.