



**STATE OF NEW JERSEY**

In the Matter of James Garrison, Jr.,  
Police Officer (S9999A), Newark

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

CSC Docket No. 2022-642

List Removal Appeal

**ISSUED: JANUARY 21, 2022 (SLK)**

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James Garrison, Jr., appeals the decision to remove his name from the Police Officer (S9999A), Newark eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Police Officer (S9999A), Newark, which had an August 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified (OL200817) and he was ranked as the 3,195<sup>th</sup> candidate. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory background. Specifically, the appointing authority’s background report indicated that he had a 2010 arrest in Sayreville for driving while intoxicated-related (DWI) offenses, which resulted in a six months driver’s license suspension, a 2010 arrest in Jackson for drug-related offenses, which resulted in pre-trial intervention (PTI) and a fine, a 2010 summons in Seaside Heights for defiant trespassing that was amended to public nuisance for trespassing at the Bamboo Bar, which was omitted from his application where he was found guilty and paid a fine, a 2013 arrest in Holmdel for shoplifting-related offenses, which resulted in a fine, and a 2016 arrest by Rutgers–New Brunswick police for drug-related offenses, which resulted in probation and a fine. Additionally, the background report indicated that the appellant had 11 motor vehicle driver’s license suspensions with the latest one being in August 2019, 10 motor vehicle moving violations with the last one being in May 2019, a 2011 failure to appear, and four motor vehicle accidents between 2005 and 2010. Moreover, when explaining the 2010 Jackson arrest, the appellant indicated that he had two painkillers when he was found to have 134 Oxycodone pills. Further, the appellant explained that he was given a field sobriety test for the DWI in Sayreville while the

record indicated that he refused a breathalyzer test. Also, the appellant did not indicate any court appearance where the record indicated eight court appearances between 2010 and 2017. Additionally, the appellant was required to maintain residency in Newark from the closing date of the examination through any date of appointment. The background investigation revealed residences in Middletown, Hazlet, Port Monmouth and Leonardo, but did not reveal any Newark addresses.

On appeal, the appellant asserts that there are many inaccuracies in the appointing authority's background report and he requests a hearing where he will have an attorney to speak on his behalf and provide documentation and facts to disprove the many unfounded allegations in the report. Regarding the assertion that he did not live in Newark from the closing date of the examination through the date of appointment, he states that he has lived in Newark throughout this time and continues to live there. The appellant presents that a home check was never conducted by an investigator and his license, voter registration and Motor Vehicle records demonstrate that he lives in Newark. Concerning his arrest in Jackson, he indicates that it was another passenger in the vehicle, and not him, who was found to be in possession of 134 prescription painkillers, which led to the dismissal of his case after he completed the PTI. The appellant emphasizes that all the cases where he was arrested were dismissed. He contends that guidelines state that criminal convictions are disqualifying convictions and he does not have any criminal convictions. The appellant highlights that the Holmdel, Seaside Heights, and Rutgers arrests were not for crimes, but for municipal misdemeanors, which resulted in fines, and he has zero criminal convictions on his record. In reference to the 11 reported driver's license suspension on his record, he indicates that all of his suspensions in the last 10 years were due to his inability to pay a fine related to his 2010 DWI and the suspensions were never court ordered and only financially driven by the Motor Vehicle Commission's surcharge. The appellant contends that the background report inaccurately indicates that he had four motor vehicle accidents between 2005 to 2010 and there are no guidelines indicating these accidents should disqualify him for being considered for a position in the subject title. Also, he states that the background report paints a picture the he was being dishonest when he refused a breathalyzer test regarding his 2010 DWI. The appellant claims that the report is twisting words, which can easily be misconstrued through writing. Contrary to the appointing authority's assertion that he was dishonest, he contends that he was forthcoming regarding this incident as the DWI was not indicated on his Motor Vehicle Commission record and he voluntarily submitted this information.

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, states that the appellant's criminal history is grounds for removal. It presents that the appellant has criminal charges related to controlled dangerous substance possession (Jackson 2010), DWI (2010), defiant trespassing (Seaside Heights 2010), shoplifting (Holmdel 2013), and drug-related charges (New Brunswick 2016). It presents that the courts have held that arrests, and not just

convictions, can be grounds for removal. Additionally, the appointing authority indicates that the appellant accepted PTI for his first CDS-related offense, which it asserts is still an adjudication of guilt. Further, it presents that he pled guilty to amended charges regarding his other criminal charges and the DWI.

The appointing authority also argues that the appellant should be removed for falsification. Regarding his 2010 arrest, the appellant submitted a sworn statement indicating that he was in possession of two painkillers while the charges reflected possession of 134 oxycodone pills. Additionally, concerning his 2016 Rutgers arrest, the appellant submitted a sworn statement indicating that he was arrested for contents in an envelope and he later only pled guilty to a cell phone violation. However, the investigation revealed that he pled guilty to a drug-related charge for cocaine paraphernalia. Further, it states that the appellant omitted information on his application regarding his defiant trespassing arrest in Seaside Heights. Also, the appointing authority presents that in response to a question on the application, the appellant did not indicate that he appeared in court, but the investigation revealed several court appearances between 2010 to 2016. Additionally, it states that the appellant failed to disclose that he was charged with refusing to take a breathalyzer test in 2009 in conjunction with his DWI arrest. Further, he indicated on his application that he never defaulted on a loan while his credit report indicates that he defaulted on several loans. Moreover, the appellant stated that his grandfather was a retired Newark Police Officer, but failed to identify him as asked. Finally, the appellant failed to provide his last three months phone, cell, utility, and cable bills, and his last three W-2s and Tax Returns as requested. It states that the last addresses showing up for the appellant based on its search reflected Middletown, Hazlet and Leonardo.

The appointing authority further argues that the appellant has an unsatisfactory driving history. It presents that he has 11 driver's license suspensions including two separate suspensions in 2019 as well as a significant number of moving violations.

## 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 Civil Service Commission (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.

*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:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment 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. Further, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant.

*N.J.A.C.* 4A:4-2.11(c)1 provides that when an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. *N.J.A.C.* 4A:4-2.11(h) provides that an applicant seeking to appeal a residency determination shall have the burden of proving his or her residency.

*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 response to the appellant's request for a hearing where an attorney could represent him, it is noted that list removal appeals are generally decided based on the written record without the need for a hearing. *N.J.A.C.* 4A:2-1.1(d). Further, the appellant had the opportunity to have an attorney represent him in this record appeal but chose not to do so. Additionally, he had the opportunity to submit documentation and other evidence as part of his written record appeal. However, other than mere unsupported statements, the appellant has not submitted any evidence that indicates that there is a dispute of a material fact in this matter. As such, there is no basis for a hearing in this matter.

In this matter, the appointing authority's background report indicates a 2010 arrest in Sayreville for DWI related offenses, which resulted in a six month driver's license suspension, a 2010 arrest in Jackson for drug-related offenses, which resulted in PTI and a fine, a 2010 summons in Seaside Heights for defiant trespassing that was amended to public nuisance for trespassing at the Bamboo Bar, which was omitted from his application where he was found guilty and paid a fine, a 2013 arrest in Holmdel for shoplifting-related offenses, which resulted in a fine, and a 2016 arrest by Rutgers–New Brunswick police for drug-related offenses, which resulted in probation and a fine. Additionally, the background report indicates that the appellant had 11 motor vehicle driver's license suspensions with the latest one being in August 2019, 10 motor vehicle moving violations with the last one being in May 2019, a 2011

failure to appear, and four motor vehicle accidents between 2005 and 2010. Concerning the appellant's belief that he cannot be removed from the subject list for arrests where he was not convicted of a crime, it is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible 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*, 261 *N.J. Super.* 401 (App. Div. 1992). Regarding the appellant's statement that he was not convicted of the 2010 drug-related offenses in Jackson since he successfully completed PTI, participation in a PTI 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 name from the subject eligible list. Therefore, the record in this matter indicates that the appellant has had continuous negative interactions with the law which warrants his removal from the subject eligible pursuant to *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*.

Additionally, the appellant did not fully or accurately describe his drug-related and DUI arrests, he omitted his defiant trespassing charge, he indicated that he did not appear in court when he did, in fact, make multiple court appearances, he did not accurately describe his credit history, he did not provide any information regarding his grandfather as requested who he indicated served as a Newark Police Officer, and he did not provide all requested bills and tax information with his application. Therefore, even if there was no intent to deceive, based on this background, the appellant's omissions and/or inaccurate explanations, were material. At minimum, the appointing authority needed this information to have a complete understanding of your background in order to properly evaluate his candidacy. Therefore, the Commission finds that the appellant could have also been removed from the list pursuant to *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*. See *In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017).

Further, 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. 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). The Commission finds that the appellant has an unsatisfactory driving background as he had 11 driver's license suspensions including two separate suspensions in 2019 and a significant number of moving violations, including one as recent as May 2019.

Moreover, the appointing authority's investigation indicated that the appellant's last addresses were in Middletown, Hazlet and Leonardo. It is reiterated that the appellant failed to supply the requested bills and tax information with his application, which could have provided some evidence that he currently lived in Newark. While the appellant complains that the appointing authority did not conduct a home visit, there is no mandate under Civil Service laws and rules that an appointing authority conduct a home investigation. Further, on appeal, he has not provided any documentation regarding his current residence. Therefore, the Commission finds that the appellant has failed to meet his burden of proof that he met the Newark residency requirement. See *N.J.A.C. 4A:4-2.11(c)1* and *N.J.A.C. 4A:4-2.11(h)*.

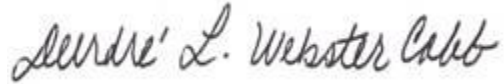
In summary, the record indicates that the appellant's background is not suitable for a position in law enforcement. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a municipal Police Office is a special kind of employee. His primary duty 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, 566 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also *In re Phillips*, 117 *N.J.* 567 (1990). Accordingly, the Commission finds that the appellant's removal from the list was proper for all the reasons set forth above, and the appellant failed to meet his burden of proof.

### **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 19<sup>TH</sup> DAY OF JANUARY, 2022



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