



STATE OF NEW JERSEY

In the Matter of Hector Nieves, Jr.,
Police Officer (S9999A), Paterson

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

CSC Docket No. 2023-472

List Removal Appeal

ISSUED: December 7, 2022 (SLK)

Hector Nieves, Jr., appeals the decision to remove his name from the Police Officer (S9999A), Paterson eligible list on the basis of not meeting the age requirements.

The appellant took the open competitive examination for Police Officer (S9999A), Paterson, which had an August 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified (OL220401) and he was ranked as the 2472 candidate. In seeking his removal, the indicated that the appellant did not meet the age requirements. Specifically, Paterson indicated that a check of the appellant’s driver’s license revealed that he was born on July 22, 1984, and, therefore, he reached his 35th birthdate prior to the closing date and is ineligible for a position as a Police Officer.

On appeal, the appellant submits a letter that indicates that he was employed by Prospect Park as a Class II Special Police Officer on November 18, 2019. Additionally, he was appointed as a full-time Police Officer on June 15, 2020, and as of June 24, 2021, he was no longer employed with Prospect Park. The appellant presents *N.J.S.A. 40A:14-127.1(a)* to support his position that his former law enforcement service can be used to reduce his age for the purposes of determining that he meets the age requirement under that *N.J.S.A. 40A:14-127*.

The appointing authority did not provide any additional arguments in support of its removal.¹

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)2, allows the Civil Service Commission (Commission) to remove a candidate's name from a list because the candidate is ineligible by law for employment in that title. *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 the decision to remove his name from an eligible list was in error.

N.J.S.A. 40A:14-127 states, in pertinent part, that no person shall be appointed as a member or officer of the police department or force in any municipality who is over 35 years of age. *N.J.S.A.* 40A:14-127 also provides that in any municipality operating under Title 11A (Civil Service), the announced closing date of a Civil Service examination determines the age cut-off deadline. *N.J.S.A.* 40A:14-127.1a provides, in pertinent part, that a former State trooper, sheriff's officer or deputy, or county or municipal police officer who has separated from service voluntarily or involuntarily, other than by removal for cause on charges of misconduct or delinquency, shall be deemed to meet the maximum age requirement for appointment established by *N.J.S.A.* 40A:14-127, if his actual age, less the number of years of his previous service as a law enforcement officer, would meet the maximum age requirement established by said section. *N.J.A.C.* 4A:4-2.3(b)2i provides that former State troopers, sheriff's officers, sheriff's deputies, County or Municipal Police Officers, New Jersey Transit police officers, Southeastern Pennsylvania Transit Authority police officers, Amtrak police officers, or any persons who were previously employed by any State or federal law enforcement agency or other public entity, and who performed duties comparable to the law enforcement duties performed in the positions specifically listed in *N.J.S.A.* 40A:14-127.1, 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former law enforcement officers as defined above who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date. *N.J.S.A.* 40A:14-127.1b and *N.J.A.C.* 4A:4-2.3(b)2ii provide that the Commission, may, for good cause shown, deem an individual who is over 35 years of age to meet the maximum age requirement for the purposes of appointment and for purpose of taking a civil service examination even though the individual's separation from current service will not occur except upon a new appointment.

In this matter, the record indicates that the appointing authority, by law, was required to remove the appellant's name from the list as he was over 35 years old as

¹ Although the appointing authority did not respond to the appeal, this agency initially sent the appellant a letter indicating the appointing authority's reason for his removal as outlined above.

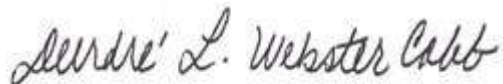
of the closing date. Specifically, the record indicates that the appellant was 35 years, one month, and 10 days old as of the closing date. Further, the appellant's service as a Class II Special Police Officer² from November 18, 2019, to June 14, 2020, and as a Municipal Police Officer from June 15, 2020, to June 24, 2021, occurred after the closing date and, therefore, this experience cannot be deducted from his age to meet the age requirement as of the closing date as required under *N.J.S.A. 40A:14-127*.

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 7TH DAY OF DECEMBER, 2022



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² It is also noted that even if the appellant served as a Class II Special Police Officer prior to the closing date, this service would not be deducted from his age to meet the age requirement as this is not one of the titles that can be used to reduce one's age. See *N.J.A.C. 4A:4-2.3(b)2i*.