



STATE OF NEW JERSEY

In the Matter of N.P.,
Fire Fighter (M1873W),
Teaneck

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

List Removal Appeal

CSC Docket No. 2022-3302

ISSUED: August 23, 2023 (JET)

N.P., represented by Lynsey A. Stehling, Esq., appeals the removal of his name from the Fire Fighter (M1873W), Teaneck,¹ eligible list, on the basis of an unsatisfactory background report.

The appellant took the promotional examination for Fire Fighter (M1873W), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on December 6, 2021 (OL211183). In disposing of the certification, the appointing authority removed the appellant on the basis of an unsatisfactory background report. Specifically, the appellant was charged as a juvenile on December 14, 2011, with Driving While Intoxicated (DWI) in violation of *N.J.S.A. 39:4-50* and *N.J.S.A. 39:4-50(g)(1)*; Leaving the Scene of an Accident in violation of *N.J.S.A. 39:4-129*; Failure to Report an Accident in violation of *N.J.S.A. 39:4-130*, and Being Under the Influence of a Controlled Dangerous Substance as a juvenile in violation of *N.J.S.A. 2C:35-10(b)*. On January 19, 2012, the appellant pled guilty to Possession/Use/or Being under the Influence of a Controlled Dangerous Substance (CDS), completed a five-month deferred disposition, and the matter was dismissed on June 19, 2012. Moreover, the appellant completed a five-month drug rehabilitation program. In March 2012, the appellant pled guilty to DWI, was fined, and his driver's license was suspended for seven months. The remaining charges were dismissed.

¹ It is noted that the Fire Fighter (M1873W), Teaneck list expired, effective March 28, 2021.

On appeal to the Civil Service Commission (Commission), the appellant maintains that his background is not sufficient to remove him from the list. Specifically, the appellant contends that he has demonstrated rehabilitation through work, exercise and maintaining health, and not using drugs in seven years. The appellant maintains that he is a resident of Teaneck, and he explains that it has always been his career goal to serve in that jurisdiction as a Fire Fighter, given that his father served as a Battalion Chief in Teaneck. The appellant states that the unfortunate events he experienced during his youth do not define him as a person, and he explains that, when he was 17 years old, he experimented with marijuana and opioid pills, including Vicodin and Percocet. The appellant adds that, on December 14, 2011, he was involved in a motor vehicle accident that was initially recorded as a hit and run. The appellant also admits that he took Vicodin on the day the accident occurred, and although he contacted the Police Department, he erroneously indicated that he was the victim of a hit and run accident. The appellant adds that, while at the scene of the accident, he eventually admitted to the Police Officers that he had used Vicodin earlier in the day. The appellant states that his actions at the time of the incident were immature and impulsive, and he now takes responsibility for his inappropriate actions. In support, the appellant provides references indicating that he should be considered for appointment as a Fire Fighter.

The appellant explains that, in August 2012, he attended Xavier University in Ohio, and during his Freshman year, he was written up by a Resident Advisor for possession of marijuana and for possession of empty open alcohol containers. In 2014, he was again written up by a Resident Advisor for possession of an empty alcohol container while being under the legal drinking age. The appellant explains that, in the summer of 2014, he obtained employment at the Bergen County Department of Parks and Recreation as a seasonal Groundskeeper, and when he returned to Xavier University in 2014, he experienced problems with marijuana, opioid use, and heroin use, which led to academic problems. The appellant states that he sought treatment at Xavier Psychological Services Center, as he was depressed and experiencing suicidal thoughts. The appellant adds that he realized that he could no longer attend Xavier University.² The appellant maintains that he purchased heroin for the last time in February 2016, and he has continued to change his life since that time.³

In response, the appointing authority, represented by Philip J. Cranwell, Esq., asserts that the appellant's desire to be employed as a Fire Fighter is shared by a large number of candidates who also applied for a position, and they are competing for a limited number of available positions. The appointing authority adds that, while

² The appellant notes that, although he was admitted in May 2015 for inpatient treatment, and later on an outpatient basis, he subsequently overdosed on heroin in September 2015. He then continued inpatient and outpatient treatment, ultimately being prescribed Klonopin for depression and anxiety.

³ The appellant notes that he returned to work as a seasonal Groundskeeper in Bergen County, enrolled in Bergen County Community College and at Pennsylvania State University, is employed as a supervisor at a golf course, and he maintains that he no longer experiences suicidal thoughts and depression.

the appellant's recent history of not engaging in substance abuse is commendable, the appointing authority does not want to appoint a candidate with a background that includes such an extensive history of drug use. The appointing authority states that the appellant's background does not demonstrate that he possesses the characteristics of a Fire Fighter, given that his juvenile background includes a hit and run accident and a DWI. The appointing authority adds that the appellant as an adult continued to abuse illegal drugs for several years, and he completed several drug and mental health interventions. The appointing authority asserts that, despite the appellant's contention that he is now "recovered," addiction is never cured. In this regard, the appointing authority states that recovery is a lifelong endeavor and some individuals relapse. The appointing authority asserts that, while the appellant's record is similar to other individuals applying for a position, the appointing authority has the authority to remove him from the list based on the totality of the circumstances presented in the appellant's background.

In response, the appellant maintains that he has not used illegal drugs for seven years since February 2016. The appellant asserts that, with respect to the appointing authority's statement that "addiction is never cured," such statements are self-serving and have no supporting data or evidence in support of the removal in this matter. The appellant contends that the appointing authority's statements do not consider that since February 2016, the appellant has demonstrated evidence of his good character and trustworthiness. The appellant adds that, while he admitted to his previous drug use, he also provided ample evidence of his good character, financial well-being, education, work experience, and references. The appellant also asserts that the appointing authority did not dispute the certification submitted by a retired Battalion Chief, who was a part of the appellant's interview panel, that recommended the appellant be appointed as a Fire Fighter in Teaneck. The appellant asserts that, although the appointing authority alleges that the appellant's actions were not minor or isolated, it fails to acknowledge, other than stating that it "weighed the factors," that it considered the appellant's evidence of rehabilitation. Moreover, the appellant states that his conduct during the last seven years does not jeopardize his potential to have an excellent working relationship with police or the public if appointed as a Fire Fighter. As such, the appellant maintains that he should be restored to the list.

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.

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, Fire Fighter 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 when requested for purposes of making a hiring decision.

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. Moreover, pursuant to *N.J.S.A. 2C:36A-1*, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or

disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. *See State v. Marzolf*, 79 N.J. 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's arrest and deferred disposition could still properly be considered in removing his name from the subject eligible list.

In this matter, the record indicates that the appellant was arrested and charged as a minor in 2011 and found guilty in 2012 of Possession/Use/or Being under the Influence of a CDS. Although the 2011 arrest occurred when the appellant was a juvenile, the appointing authority could consider the incident as a part of its background check in order to determine the appellant's suitability for employment. The appointing authority argues, in part, that its pre-employment processing criteria requires it to remove the appellant based on the 2011 arrest. However, the appellant states that he has learned from his experiences and explains that he has not been charged with any other infractions since 2011. The Commission is not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005). *See also, In the Matter of Debra Dygon* (MSB, decided May 23, 2000). In this matter, the record reflects that the appellant's juvenile arrest occurred 12 years ago, and that he has not been involved with any further arrests since that time. Although the arrest can be considered an isolated incident, the appellant has not provided a sufficient explanation for his involvement in the 2011 incident. In this regard, the appellant admits that he took Vicodin at the time of the 2011 incident, which evidences his poor judgement. Although the appellant argues that he has not used drugs since 2016, he acknowledges that he continued to use illegal drugs until 2016, and as a result, he was unable to continue his education at Xavier University. Although it is commendable that the appellant has apparently changed his life for the better, an insufficient amount of time has elapsed since 2016 to establish that the appellant has been rehabilitated, as only five years had passed from that time to the December 2021 certification date, and only two years had passed from that time to the August 31, 2018 closing date for the subject examination. *In Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998) the Supreme Court stated:

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.

In this matter, the appellant's adverse background information pertaining to the 2011 arrest, as well as his admitted illegal drug use from 2011 through 2016, are relevant to the position sought, as such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Fire Fighter. As noted above, the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. Although the appellant was a juvenile when the arrest occurred, it cannot be ignored that such a disregard for the law is unacceptable for a candidate for Fire Fighter. Accordingly, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M1873W), Teaneck eligible list. However, the removal in this matter does not prevent the appellant from applying for any similar positions in the future, and, given the nature and age of his arrest history, with the presentation of evidence of rehabilitation and the further passage of time, such a background will be insufficient to remove him from a future similar 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 23RD DAY OF AUGUST, 2023

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