



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE**

CIVIL SERVICE COMMISSION

In the Matter of Christian Herr II, Fire
Fighter (M1856X), Newark

List Removal

CSC Docket No. 2025-1047

ISSUED: June 10, 2026 (EG)

Christian Herr II, represented by Craig S. Gumpel, Esq., appeals the decision of Newark to remove his name from the eligible list for Fire Fighter (M1856X), Newark based on falsification of his preemployment application.

The subject eligible list (M1856X)¹ promulgated on April 27, 2023, and expired on April 27, 2025. The appellant’s name appeared on the September 1, 2023, certification (OL231132) of the eligible list. He was in the first position on the certification. In disposing of the certification, the appointing authority requested that the appellant’s name be removed based on falsification of his preemployment application. In support of its decision, the appointing authority asserts that the appellant failed to indicate that he had been rejected for employment by a fire department and rejected for a civil service position. It contends that the appellant was disqualified from the Morristown Fire Department for non-residency and had previously been rejected by the Newark Fire Department in 2022. It also indicated that the appellant’s criminal record disqualified him from appointment. The appointing authority asserted that on August 6, 2004, the appellant was arrested for possession of marijuana. It contends that while this charge was later dismissed, the

¹ It is noted that the appellant’s appeal in the *In the Matter of Christian Herr, Fire Fighter (M1856W), Newark* (CSC, decided September 20, 2023) was granted, and the list was revived so his name could be certified at the time of the next certification.

appellant displayed a lack of maturity and regret by not telling the truth about this incident to the arresting officers. Additionally, the appellant was arrested on March 8, 2003, for possession/consumption of alcohol under the legal age. The appellant pled guilty and was fined \$348. Further, the appellant was arrested again on July 20, 2005, for possession/consumption of alcohol under the legal age. The charge was amended to a city ordinance disturbance, and the appellant pled guilty and paid a \$378 fine. The appellant's final arrest occurred on August 18, 2006, for public intoxication and disorderly conduct. He pled guilty to both counts and paid a \$300 fine. Moreover, it contends that the appellant's personal character disqualifies him due to the dishonesty displayed during his August 6, 2004 arrest. It also argues that the fact that the appellant indicated he consumed drinks two times per week while having two to three drinks per sitting demonstrates that he has not restrained from using this substance since his arrests and asserts that it has been scientifically proven that alcohol and drug abuse can cause serious issues in mental well-being.

On appeal, the appellant argues that he was never informed and did not know that he was rejected for employment by the Morristown Fire Department. He does not ever recall receiving a notification and he was never contacted for an interview or any background check. He adds that he resided in Morris County at the time he applied and had assumed that he qualified for Morristown as he thought that list would be a County wide list. Additionally, he states that he answered the same in his 2022 application with the appointing authority and informed them during the interview process of his application to the Morristown Fire Department, and the appointing authority never indicated it was an issue. Further, the appellant argues that he was not properly rejected for employment by the appointing authority in 2022 as he was successful on his appeal. Regarding his arrest record, the appellant argues that in its prior decision, the Civil Service Commission (Commission) found that the appointing authority had not presented a sufficient basis to remove him based on his criminal record. He asserts that the appointing authority has not provided any basis for the Commission to decide differently in the instant matter. Moreover, the appellant states that his alleged alcohol use and alleged dishonesty have no merit. Only one alcohol arrest occurred while he was over 21 and none resulted in any serious consequences beyond paying a fine. The appellant requests that his appeal be granted and that the Commission order that he be appointed to the position of Fire Fighter with retroactive seniority, backpay and benefits, and counsel fees.

CONCLUSION

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 removal of an individual from an eligible list who 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 Civil Service Commission to remove an eligible's name from an eligible list for other sufficient reasons.

Additionally, *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide 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. 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, *inter alia*, correction officer titles. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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).

A thorough review of the record indicates that the appellant's removal from the (M1856X) eligible list for Fire Fighter is not warranted. Initially, the Commission notes that the appellant's criminal history was thoroughly reviewed in *Herr, supra*, and it found that the appointing authority had not presented a sufficient basis to remove the appellant's name from the (M1856W) eligible list based upon his criminal record. Specifically, the Commission came to that conclusion after taking into consideration that the appellant's arrests occurred while he was young, the last incident occurred in 2006, and the totality of the evidence in the record, including the appellant's gainful employment and volunteer activities since his last arrest. In the instant matter, the record indicates that the appellant has not had any new arrests since the Commission's 2023 decision. Accordingly, the appellant's criminal history still does not provide a sufficient basis to support his removal from the subject list.

Regarding the appellant's failure to list his rejection from the Morristown Fire Department, the appellant has asserted that he never received notice of such a rejection. No evidence was presented that the appellant was notified or that he had or should have had knowledge of this rejection. Further, being rejected for

appointment due to a residency issue, such as an assumption by a candidate that they met the announced residency requirement, is not, on its face, falsification of a material fact that would automatically disqualify the candidate from the subject list.

The last argument made by the appointing authority to remove the appellant from the eligible list is based on dishonesty and his alleged underage drinking of alcohol. *See N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*. Neither of these reasons as presented are sufficient for removal. The allegation of dishonesty was based on the application reviewer's opinion regarding one of the appellant's arrests that was dismissed. As the arrest was not found to be a sufficient basis for removal, the allegation of dishonesty is also insufficient to remove him. Similarly, an allegation of the appellant drinking alcohol underage, is also insufficient to support his removal, as there was no evidence presented that the appellant has a substance abuse problem.

The appellant has requested that his name be restored to the eligible list and that he be immediately appointed with retroactive seniority, backpay and benefits, and counsel fees. However, the Commission notes that the appellant did not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Further, the Commission generally does not award counsel fees in written record appeal matters absent a showing of bad faith or invidious motivation on the appointing authority's part. *See generally N.J.A.C. 4A:2-1.5(b)*. No such showing has been made in this matter as there is no evidence that the appointing authority removed the appellant from the list for any reason other than its legitimate concerns with his background, and its interpretation, albeit incorrect, of how he completed his application. However, a third attempt by the appointing authority to remove the appellant from the subject eligible list based on information already presented to it, that the Commission has already found to be not sufficient to support his removal from an eligible list, could result in a finding of bad faith or invidious motivation. Therefore, the only remedy being provided to the appellant is that the Fire Fighter (M1856X), Newark eligible list be revived so that the appellant's name may be certified at the time of the next certification, for prospective employment opportunities only.

ORDER

Therefore, it is ordered that the appellant's appeal of the removal of his name from the list for Fire Fighter (M1856X), Newark be granted, and the list be revived so that the appellant's name may be certified at the time of the next certification, for prospective employment opportunities only. No other remedies are provided.

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 10TH DAY OF JUNE, 2026



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