



B-2

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Darryl Jones, Fire
Fighter (M2554M), Newark

CSC Docket No. 2015-2857

List Removal Appeal

ISSUED: NOV 20 2015

(CSM)

Darryl Jones, represented by Bette R. Grayson, Esq., appeals the attached decision of the former Division of Classification and Personnel Management (CPM)¹ which found that the appointing authority had presented a sufficient basis to remove his name from the eligible list for Fire Fighter (M2554M), Newark, on the basis of an unsatisfactory background report.

The appellant's name appeared as the 126th ranked eligible on the subject list that was issued on December 13, 2011 and expires on December 12, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory background report. In support of its request, the appointing authority provided a copy of its background investigation report asserting that the appellant had a suspended driver's license, was charged with and convicted of possession of marijuana in Alabama in October 2010 and failed to meet the residency requirement. The appointing authority provided copies of various records in support of its request, including Motor Vehicle Commission records indicating that as of March 14, 2013, the appellant's drivers license was suspended. Additionally, the appointing authority provided a criminal history record check indicating that an individual with the same name as the appellant had multiple charges and convictions for possession of marijuana in Alabama. The appellant appealed the removal of his name from the list to CPM, which found that the appointing authority sufficiently documented its request to remove the appellant's name from the subject list.

¹ Now known as the Division of Agency Services.

On appeal to the Civil Service Commission (Commission), the appellant states that he never received a response as to why his name was being removed from the list. However, he states that he has the same name as his father, who had a child support judgment against him from 1999, but as the appellant was only 14 years old at that time, it is not a judgment against him. He also states that he received a speeding ticket on December 6, 2010, but those fines were paid in full. Additionally, he states that charges against him for possession of a controlled dangerous substance in Newark were dismissed on January 10, 2005. In support of his contentions, the appellant provides copies of a credit report, his birth certificate, a certificate of disposition for the speeding tickets, evidence of dismissal of the possession charge in January 2005, and a copy of his Commercial Driver License.

Although provided the opportunity, the appointing authority did not provide any additional information for the Commission to review in this matter.

CONCLUSION

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 removal of 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. Additionally, 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).

In the matter at hand, the record establishes that the appellant's driver's license was suspended at the time the appointing authority was performing its background investigations between March and June 2013. Additionally, the appellant received a ticket for speeding, failure to notify DMV of an address change, and driving after his license was suspended or revoked in December 2010. However, a poor driving record does not necessarily provide a basis to remove an applicant's name from a Fire Fighter list. See *In the Matter of John Rispoli*, Docket No. A-6849-97T3 (App. Div. December 2, 1999) (Driving record does not provide evidence of inability to perform the duties of a Fire Fighter in the way a poor driving record may evidence a disrespect for the law adversely affecting a Police Officer's ability to perform his or her duties). The Commission has also reversed the suspension and removal of a Fire Fighter where it was determined that a driver's license was not an essential function of the job. *Whittle v. East Orange Fire Department*, 95 *N.J.A.R. 2d* (CSV) 83 (1994). Compare, *In the Matter of William*

Bryant, Jr. (MSB, decided July 25, 2000) (Since possession of a driver's license was essential in Jersey City, the Board upheld the removal of a Fire Fighter who had his driver's license suspended for a DWI offense and failed to report it to his superiors). In the instant matter, even assuming the appointing authority demonstrates that driving is an essential duty for a Fire Fighter within its jurisdiction, the appellant currently possesses a valid driver's license.

With respect to the criminal charges, a review of the documentation submitted by the appointing authority reveals that this is not the appellant's criminal history record. Rather, the record demonstrates that the appellant's social security number is different than the one associated with the criminal history record the appointing authority provided in support of its request for list removal. Additionally, the birth date on the criminal history record is different than the appellant's birth date. Therefore, it appears that the appointing authority erroneously relied on a criminal history record of an individual with the same name in support of its request to remove the appellant's name from the list.

Under these circumstances, the appointing authority has not presented a sufficient basis to remove the appellant's name from the list. Thus, since the appointing authority made appointments below the appellant's rank on the OL130280 certification on which his name appeared, it could not bypass him in accordance with the Rule of Three. Therefore, it is ordered that the appellant's name be restored to the Fire Fighter (M2254M), Newark, eligible list and that the July 23, 2012 certification of the list be reissued to include the appellant's name. The appointing authority is to properly dispose of this certification pursuant to *N.J.A.C.* 4A:4-4.8. If the appellant is appointed and absent any further disqualification as a result of an updated background check, upon successful completion of a current working test period, the appellant shall be given a retroactive date of appointment to the date that he would have received an appointment but for his removal from the certification.

This is the final administrative determination in this matter. Any further

ORDER

Therefore, it is ordered that this appeal be granted.

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 18TH DAY OF NOVEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Darryl Jones
Bette R. Grayson, Esq.
Michael E. Greene
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

March 17, 2014

Darryl T. Jones	Title: Fire Fighter Symbol: M2554M Jurisdiction: Newark Certification Number: OL130280 Certification Date: 03/01/13 7/23/12 or 2/1/13
-----------------	---

Initial Determination: Removal – Unsatisfactory background report

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a) 9, which permits the removal of an eligible candidate's name from the 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.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied. A copy of the supporting documentation submitted by the Appointing Authority is enclosed for your review.

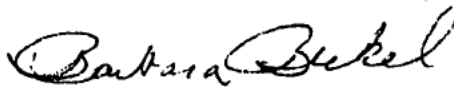
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Darryl T. Jones
Page 2

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Barbara Bickel
Human Resource Consultant

c: Julien X. Neals

