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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Sandy Delarosa, Fire  
Fighter (M2542M), Jersey City

CSC Docket No. 2015-2837

List Removal Appeal

ISSUED: **DEC 17 2015** (CSM)

Sandy Delarosa, represented by Catherine Elston, Esq., appeals the attached decision of the Division of Agency Services (Agency Services) which found that the appointing authority had presented a sufficient basis to remove his name from the eligible list for Fire Fighter (M2542M), Jersey City on the basis of an unsatisfactory criminal record.

The appellant's name appeared as the 16<sup>th</sup> ranked veteran 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 criminal record. In support of its request, the appointing authority provided a copy of the appellant's arrest record which included a felony conviction for a third or subsequent Driving while Intoxicated (DWI) offense and his driver's abstract which revealed multiple violations for speeding, unsafe operation of a motor vehicle and operating a vehicle with a suspended or revoked license. The appellant appealed the removal of his name from the list to Agency Services, which found that the appointing authority sufficiently documented its request to remove the appellant's name from the subject list.

On appeal to the Civil Service Commission (Commission), the appellant states that he was charged with possession of a controlled dangerous substance (CDS), in violation of *N.J.S.A. 2C:35-10*, a disorderly persons offense, in 2000 when he was 18 years old. However, this charge was dismissed upon his successful completion of a diversionary program. In 2001 and 2005, when he resided in Virginia, the appellant states that he was arrested for DWI. While a DWI appears

to be a criminal offense in Virginia, the appellant notes that it is only a motor vehicle offense in New Jersey. Moreover, his first offense occurred when he was 19 years old and he was 23 when he received the two DWI's in 2005. Additionally, a charge relating to concealment of a weapon involved a registered handgun that he improperly stored in his vehicle. The appellant explains that during the time of his 2005 arrests, he was experiencing a difficult readjustment to civilian life after serving in the United States Navy. In this regard, during his four years of service, the appellant only returned home for a period of approximately four to five months and he only saw his child for the first time when the child was almost one year old. While the appellant does not understate the mistakes he has made, he highlights that he has remained sober for almost 10 years and has turned his life around. The appellant also argues that a driver's license is not essential to the firefighting function in Jersey City and that DWI violations are considered motor vehicle violations in New Jersey. He also emphasizes that the violations occurred over ten years ago and the fact that he has almost 10 years of steady employment, attends college, and has a family, evidence the requisite rehabilitation to overcome his driving infractions. In support of his appeal, the appellant provides copies of various military commendations and medals he received while serving in the Navy, his college transcript, and a letter of recommendation from a college professor.

In response, the appointing authority, represented by Vincent Signorile, Assistant Corporation Counsel, presents that the appellant has committed several serious offenses over an extended period of time which casts doubt on his ability to adhere to the high standard of conduct required of a Fire Fighter. Although the appellant has submitted some evidence of rehabilitation, the appointing authority underscores that the offenses he committed were not isolated, as he was convicted of DWI on three separate occasions. It also disagrees with the appellant's argument that his felony DWIs in Virginia should be viewed more leniently since it is not as serious an offense in New Jersey. In this regard, the crime was committed in Virginia and, if the appellant would prefer all of his convictions be judged under New Jersey criminal law, his possession of a firearm without a permit to carry in May 2005 that he received in Virginia would be charged as a crime in the second degree in New Jersey under *N.J.S.A. 2C:39-5(b)*. Additionally, the appointing authority contends that the appellant has not maintained steady employment, as he indicated on his application that he had been receiving unemployment compensation since December 2010. Further, the appellant certified he worked full-time managing his family's sports bar, however, he did not list this on his employment application. The appointing authority also states that even though the appellant obtained a valid New Jersey driver's license, he admitted that his Virginia license was suspended and that the case disposition for his third DWI indicated that his license was suspended for 55 years. Therefore, since Virginia and New Jersey have joined a Driver's License Compact, which prohibits the issuance of a license when an applicants' license has been suspended and the term of the

suspension has not ended, the appointing authority questions how the appellant could be issued a New Jersey license.

In a supplemental submission, the appointing authority states that the appellant indicated that his last serious motor vehicle offense was a speeding ticket in 2007. However, the appellant's driver's abstract reveals that he was charged with careless driving on September 1, 2013 and his New Jersey license has been suspended eight times between 2001 and 2012, most recently in May 2012 under the Parking Offenses Adjudication Act. Further, the appointing authority notes that the appellant indicated that he has served in the Navy Reserves since 2007, but he did not list this as a source of income on his 2009 or 2010 tax returns. Moreover, the appellant received unemployment compensation in 2011 and 2012, despite his assertion that he has been steadily employed at his family's sports bar since 2007.

### CONCLUSION

*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 eligible 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 law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine. 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 review of the record demonstrates that the appellant was convicted of DWI's in Virginia for one violation in 2001 and two violations in 2005. The appellant's criminal record indicates that Virginia considers up to two DWI offenses to be misdemeanors and a third and subsequent DWI's to be felonies. Even

assuming *arguendo* that the appellant's felony conviction for his third DWI in Virginia should be considered as a disorderly persons offense in this case, while the appellant's arrests and convictions for three disorderly persons offense cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that the appellant was involved in such activity reflects upon his character and his ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002). Moreover, it is noted that the removal of eligibles from Fire Fighter lists on the basis of adverse criminal records have been upheld. See *In the Matter of James Alessio* (MSB, decided March 9, 1999). In that case, the eligible attempted to deceive the appointing authority in regard to his three prior arrests and the actual reason supporting his separation from the Postal Service, *i.e.*, his 1992 conviction for a federal offense which was committed during this employment. In *Alessio, supra*, it was concluded that such disregard is unacceptable in a Fire Fighter who operates in the context of a paramilitary organization in which the ability to follow orders is crucial to saving lives. *Karins v. City of Atlantic City*, 152 *N.J.* 532, 552 (1998) was relied upon in that matter, in which 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.

Additionally, while the appellant has shown some rehabilitation, it cannot be ignored that he was also charged with possession of a CDS in 2000 that was dismissed through participation in a diversionary program, had multiple driving infractions in Virginia and New Jersey for such things as driving with a suspended license, speeding, and driving without a seatbelt, and his license was suspended on multiple occasions from 2001 to 2013. Further, the appellant was found guilty of having a concealed weapon in June 2005 and his last DWI occurred in November 2005.

Even assuming the appellant did not have an adverse criminal background, his documented unsatisfactory driving record would provide a basis on which to remove his name from the list. *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.

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 former Merit System 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, driving is an essential duty for a Fire Fighter in Jersey City. As noted earlier, the appellant has numerous motor vehicle violations and driver's license suspensions between 2001 and 2013. Of particular concern is the fact that the appellant's Virginia motor vehicle record indicates that his license was suspended for a term of 55 years but he possesses a valid driver's license in New Jersey. As noted by the appointing authority, New Jersey and Virginia have joined the Driver's License Compact which prohibits the issuance of a license when an applicant's license has been suspended and the term of the suspension has not ended. *See N.J.S.A. 39:5D-5*. Moreover, the appellant has not rebutted the appointing authority's assertion that he indicated that he worked full time for his family's sports bar since 2007, but indicated on his tax returns that his only income for those years was unemployment compensation in 2011 and 2012. Therefore, the appointing authority has provided a sufficient basis on which to remove the appellant's name from the subject list.

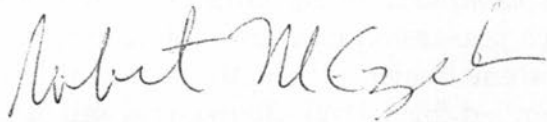
Finally, it is recognized that a firefighter occupies a highly visible and sensitive position within the community and the standard for an applicant includes a good character and utmost confidence and trust. *See N.J.S.A. 40A:14-9* which provides, in pertinent part, that except as otherwise provided by law, no person shall be appointed as a member of the paid or as a paid member of a part-paid fire department and force unless he is of good moral character. In this case, it is unclear, given the Driver's License Compact, why the appellant is licensed in New Jersey when all of his motor vehicle records from Virginia indicated that his license was indefinitely suspended. Accordingly, the Commission is referring this matter to the Motor Vehicle Commission for review. *See In the Matter of Luke Cerchio* (CSC, decided September 18, 2013) (Commission referred matter of appellant's attempt to lower his automobile insurance rates by using a different address to the MVC for further review).

### 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 16<sup>TH</sup> DAY OF DECEMBER, 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: Sandy Delarosa  
Catherine Elston, Esq.  
Vincent Signorile, Assistant Corporation Counsel  
Kenneth Connolly  
Motor Vehicle Commission



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
AGENCY SERVICES  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

Robert M. Czech  
Chair/Chief Executive Officer

April 7, 2015

Catherine Elston



**RE: Removal of Name from Eligible List – Sandy Delarosa**

**Title: Fire Fighter**  
**Jurisdiction: City of Jersey City**  
**Symbol: M2542M**  
**Certification No: OL120384**  
**Certification Date: 03/12/12**

Dear Ms. Elston:

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

The Appointing Authority requested removal of Mr. Delarosa's name in accordance with N.J.A.C. 4A:4-4.7(a)4, which permits the removal of an eligible candidate's name for a criminal record which adversely relates to employment. Note that an expunged record does not preclude removal from a list for certain titles, including police officer [4A:4-4.7(a)4ii].

In support of its decision, the Appointing Authority provided a copy of your client's arrest record which includes a felony conviction for a third or subsequent offense for DUI. Additionally, your client's driver's abstract reveals a listing of violations for which include, but is not limited to, speeding, unsafe operation of a motor vehicle, and operating while suspended or revoked.

In your correspondence, you indicate that your client was 18, 19, AND 23 when he was arrested acknowledges the mistakes he made as a young man. You further state that while in no way is your client attempting to understate the mistakes made, he asks that consideration be given to his age at the time of the arrests, the unique circumstances that led to his alcohol offenses and the nine plus years that have transpired since.

Recognizing the nature of the position at issue, the Appointing Authority may consider your client's background when determining eligibility for the position of Firefighter. Although you state there were

mitigating factors which led to your client's arrests, it does not excuse his disregard for law on multiple occasions.

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 client's name to the eligible list. Therefore, the Appointing Authority's decision to remove Mr. Delarosa's name has been sustained and your appeal is denied.

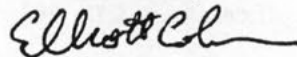
In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit 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.

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 Appeals Record Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Director,



Elliott Cohen,  
Local Placement Services

c: Robert J. Kakoleski

