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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Robert DiGravina,
Fire Fighter (M2543M), Town of
Kearny

List Removal Appeal

CSC Docket No. 2015-2680

ISSUED: **OCT 12 2015** (HS)

Robert DiGravina appeals the removal of his name from the eligible list for Fire Fighter (M2543M) on the basis of a positive drug test.

By way of background, the appellant appeared on the Fire Fighter (M2543M), Town of Kearny eligible list, and his name was certified to the appointing authority on October 30, 2014. In disposing of the certification, the appointing authority requested the removal of his name due to a positive drug test. In support of its request for removal, the appointing authority submitted a laboratory report from Omega Laboratories, Inc. dated January 30, 2015, indicating that a sample of the appellant's hair was collected on January 26, 2015 at Dynamic Testing Service and received by the laboratory on January 28, 2015. The hair was tested using the standard Hair 5 Drug Panel and Extended Opiates Test and proved positive for THC Metabolite (marijuana) at 0.18 picograms (pg)/per milligram (mg) of hair. The confirmation cut off was 0.10 pg/mg. The summary of the report from Dynamic Testing Service noted a positive test result for marijuana.

On appeal to the Civil Service Commission (Commission), the appellant states that he is "one hundred percent certain" that his "urine" is clean, *i.e.*, negative, because he has never done drugs. The appellant also claims to have heard that some of the drug tests did not come back accurately and that some tests did not come back with either a positive or negative reading.

In response, the appointing authority, represented by Robert J. Merryman, Esq., states that it has very strict pre-employment requirements for Fire Fighter

candidates due to the physically demanding and safety-sensitive nature of the position. It requires candidates to undergo drug screening after a conditional offer of employment. The appointing authority notes that the appellant received a conditional offer of employment and argues that the appellant acknowledged that he was required to successfully complete a drug screen when he signed the conditional offer. On January 26, 2015, the appellant underwent a drug screen and tested positive for marijuana. The appointing authority contends that the drug screen and reports from the laboratory confirm that the appellant could not provide a legitimate explanation for having an illegal substance in his system. As a result of the positive drug screen, he was not hired and was removed from the eligible list in accordance with Civil Service rules allowing for such removal where the eligible has failed to pass examination procedures or for other valid reasons. In support, the appointing authority submits copies of the conditional offer of employment signed by the appellant and the results of the appellant's drug screen.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)3, states that an eligible who is physically unfit to perform effectively the duties of the position may be removed from the eligible list. *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, also states that an eligible may be removed from an eligible list for other sufficient reasons as determined by the Commission.

Apart from a general assertion that he has never done drugs and speculation regarding other drug tests, the appellant provides no substantive evidence to dispute the result of his drug screen. Accordingly, the appointing authority has met its burden of proving that the appellant had a positive drug test. Clearly, such a result would prevent him from effectively performing the duties of the position at issue. The appellant, therefore, does not meet the required qualifications for the Fire Fighter title. According to the job specification, Fire Fighters are entrusted with the safety and maintenance of expensive equipment and vehicles and are responsible for the lives of the public and other officers with whom they work. In *Karins v. City of Atlantic City*, 152 *N.J.* 532, 552 (1998), the New Jersey 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.

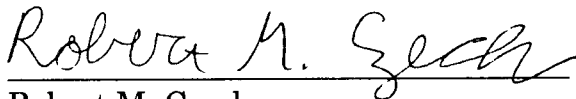
Clearly, a positive drug test presents an impediment to the appellant's ability to perform these firefighting duties.

ORDER

Therefore, it is ordered that this appeal be denied and the name of Robert DiGravina be removed from the eligible list for Fire Fighter (M2543M), Town of Kearny.

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 OCTOBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

- c. Robert DiGravina
- Michael Martello
- Robert J. Merryman, Esq.
- Joe Hill

