



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Kyle Davis, Fire
Fighter (M2564M), Plainfield

List Removal Appeal

CSC Docket No. 2016-2739

ISSUED:  26 2016

Kyle Davis, represented by Hassen I. Abdellah, Esq., appeals the removal of his name from the eligible list for Fire Fighter (M2564M), Plainfield on the basis of an unsatisfactory driving record.

The appellant, a non-veteran, took and passed the open competitive examination for Fire Fighter (M2564M), which had a closing date of March 31, 2010. The resulting eligible list promulgated on December 13, 2011 and expired on December 12, 2015.¹ The appellant's name was certified to the appointing authority on February 5, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory driving record and submitted a copy of the appellant's driver abstract in support. The abstract indicated the following: three violations for speeding dated December 13, 2013, August 5, 2010 and August 26, 2008 respectively; two violations for failure to wear a seat belt dated March 19, 2010 and June 2, 2008 respectively; one violation for improperly letting off/taking on a passenger dated February 23, 2008; one violation for careless driving dated March 19, 2010; and one violation for unsafe operation of a motor vehicle dated May 23, 2014. In addition, the appellant's registration was suspended from December 19, 2014 to January 14, 2015 for failure to maintain insurance. It is also noted that the abstract indicated that the appellant's license was in good standing.

¹ In *In the Matter of Open-Competitive Lists for Fire Fighter (M9999M)* (CSC, decided December 4, 2013), the Civil Service Commission extended the eligible list for two years.

On appeal to the Civil Service Commission (Commission), the appellant avers that his driving history does not adversely impact his ability to perform the duties of the position.

In response, the appointing authority, represented by Nicholas DelGaudio, Esq., maintains that the appellant has a driving history that relates adversely to and is incompatible with the duties of a Fire Fighter. It points to several provisions of the Plainfield Fire Division's Rules and Regulations (Rules and Regulations) that, it argues, set forth some of the relevant requirements to serve as a Fire Fighter in the jurisdiction and explain the nature of the position at issue. The Code of Ethics section provides: "As a fire service professional my fundamental duty is to serve the public . . . I will be exemplary in obeying the laws of the land" Subsection 4.5-1 provides: "All members are required to have and maintain a valid New Jersey Driver's license at all times" Subsection 5.1-19 provides: "Division vehicles not engaged in emergency operations must comply with all traffic regulations and respect street controls of vehicles by Police Officers or street traffic devices." Subsection 5.4-3 provides: "Members shall not maliciously or negligently damage any . . . apparatus nor shall they handle the above in a careless, reckless, or unsafe manner." Subsection 6.2-51 provides for a disciplinary infraction for "[c]areless or negligent operation of Fire Division vehicles or apparatus causing damage or injury to members or civilians." In support, the appointing authority submits copies of the appellant's driver abstract and the Rules and Regulations.

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 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 appointment.

The Commission has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle violations 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). However, a similar standard does not exist for Fire Fighters. Compare, *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

² In full, this sentence reads: "All members are required to have and maintain a valid New Jersey Driver's license at all times, but such provision may be temporally [sic] waived by the Director."

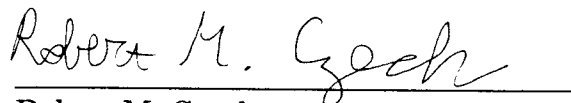
adversely affecting a Police Officer's ability to perform his or her duties). The former Merit System Board has also reversed the suspension and removal of a Fire Fighter where it was determined that possessing a driver's license was not an essential function of the job. See *Whittle v. East Orange Fire 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 Matter of Aivery Walden, City of Paterson*, Docket No. A-2350-09 (App. Div. July 14, 2011) (Appellate Division upheld removal of a Fire Fighter who was convicted of two DWI's, finding that the appellant produced no evidence of a disability and that the appointing authority offered him an opportunity for rehabilitation). In the instant matter, the appointing authority has established that driving is an essential duty of a Fire Fighter in its jurisdiction, as indicated in the Rules and Regulations. In this regard, all members of the Fire Division are required to maintain a valid driver's license at all times (with only a limited exception). Furthermore, the appointing authority has included multiple provisions addressing and setting standards for proper vehicle use that all members are required to observe. One such provision specifically references compliance with all traffic regulations and respect for vehicle street controls by Police Officers or street traffic devices. Members are also subject to discipline for the careless or negligent operation of Fire Division vehicles that causes damage or injury to other members or civilians. It is emphasized that the appellant's driving record includes eight recent violations and a registration suspension for failure to maintain insurance, with two of the violations and the suspension occurring during the life of the eligible list. This driving record reflects, in this particular matter, a pattern of disobeying motor vehicle laws and rules that is inconsistent with the position of a highly visible public employee such as a Fire Fighter. Accordingly, the appellant's driving record constitutes a sufficient basis for the removal of his name from the subject eligible 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 19TH DAY OF OCTOBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

- c. Kyle Davis
Hassen I. Abdellah, Esq.
Rick Smiley
Nicholas DelGaudio, Esq.
Joe Hill