



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Peter Eichen, Police
Officer (S9999R), Beachwood
Borough

List Removal Appeal

CSC Docket No. 2016-688

ISSUED: ~~NOV~~ 20 2016 (HS)

Peter Eichen 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 the appellant's name from the Police Officer (S9999R), Beachwood Borough eligible list on the basis of an unsatisfactory background report.

The appellant, a disabled veteran, took and passed the open competitive examination for Police Officer (S9999R), which had a closing date of September 2013. The resulting eligible list promulgated on May 2, 2014 and expires on May 1, 2016. The appellant's name was certified to the appointing authority on July 14, 2014. In disposing of the certification, the appointing authority requested the removal of the appellant's name based on his unsatisfactory driving, employment and criminal records, and his falsification of the application. Specifically, the appellant's driving record reflected the following: two violations for speeding dated April 19, 2009 and July 2, 2009 respectively; one violation for careless driving in 2004; and one violation for failure to observe a traffic control device dated April 7, 2014. The appellant's employment record included acts labeled "Incompetency, Inefficiency or Failure to Perform Duties" that occurred during the appellant's employment as a County Correction Officer with the Ocean County Department of Corrections. Specifically, the appellant, on May 2, 2013, May 4, 2013 and May 5, 2013, had entered in a log book that certain "health and welfare" checks in a dorm had been conducted when he had not actually conducted those checks. The appellant received verbal counseling and was advised that "logging a health and welfare check when it was never conducted is falsification of a legal document." The

appellant's criminal record included multiple police contacts for assaults and disorderly conduct and a charge for disorderly conduct dated June 7, 2009, which was ultimately dismissed. The appointing authority also asserted that the appellant had falsified his application by failing to disclose a previous employer and an instance of police contact. Upon his appeal to Agency Services, it found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant argues that the June 7, 2009 disorderly conduct charge provides no support for the decision to remove his name from the eligible list because he was actually the victim in that incident and the charge was ultimately dismissed.¹ He also notes that he does not have any criminal convictions. With respect to his driving record, the appellant states that he noted in his application that there were additional violations that he could not remember. He explains that he went to the DMV to obtain an abstract, but the records only went back "so far." Although the appellant states that he could have mailed the Newark office to obtain more information, he argues that this was not feasible given the short timeframe to complete the application. Regarding the verbal counseling the appellant received while employed as a County Correction Officer at the Ocean County Department of Corrections, he explains that he made an honest mistake of writing down one of his checks when he thought he had done it, but he had gotten "sidetracked" and did not actually complete it. The appellant claims that he was told that his error in writing down the check was a very minor infraction and would not be kept on his employee record for more than six months.² He also states that he has not had any other incidents at other positions. Further, the appellant alleges that there has been discrimination against veterans in the hiring process. Specifically, he argues that in each year he has applied, every veteran on the list was bypassed and the candidates who received job offers were either acquainted with someone on the force or were part-time officers.

In response, the appointing authority, represented by Thomas G. Gannon, Esq., reaffirms its decision to remove the appellant from the subject eligible list based on an unsatisfactory background and application. It re-emphasizes that there were many instances, including motor vehicle summonses, that were not included on the appellant's application. It further contends that all other instances, including those at the Ocean County Department of Corrections, support the appellant's removal from the eligible list. Finally, the appointing authority denies

¹ The New Jersey Automated Complaint System disposition inquiry for this charge includes the following comment: "This was the victim."

² The notice detailing the infractions included the following language: "The above named employee has been advised that this document will become a part of his/her permanent personnel file and may be considered in subsequent personnel actions."

that it discriminates against veterans, maintaining that it treats all applicants in the same manner and in accordance with the law.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. *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. 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). *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 Commission to remove an eligible's name from an employment list when he 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:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his name from an eligible list was in error.

The record in this matter reflects that the appellant's driving record included at least the following four violations: one violation for careless driving in 2004; two violations for speeding in 2009; and one violation for failure to observe a traffic control device in 2014. The last of these violations occurred approximately only three months before the certification date. Also, the appellant acknowledged the existence of additional violations in his driving history for which he could not obtain records or recall the details. As such, his driving record at the time of the instant certification revealed a disregard for the motor vehicle laws, behavior that is incompatible with the duties of a law enforcement officer. See *Joy, supra*. The record further reflects that the appellant was counseled by the Ocean County Department of Corrections for falsifying a legal document on three occasions in May 2013, when he was employed as a County Correction Officer. While the appellant argues that the violation was minor, Police Officers would be expected to maintain accurate records in the course of their duties. For example, the Civil Service job specification for the title of Police Officer includes the following example of work: "Records patrol activities by filling out log sheet after each call in order to account

for actions, mileage, and time on a daily basis.” Thus, the infractions adversely relate to the employment sought. Additionally, the record reflects that on his application, the appellant omitted a previous employer and an instance of police contact and provided only a partial list of his driving violations. It should be noted that the appellant was removed from an earlier Police Officer eligible list for falsification of the employment application. *See In the Matter of Peter Eichen* (CSC, decided December 4, 2013). As such, the appellant was aware that he was required to provide a complete and accurate depiction of his history on his application.

The appellant’s driving record, recordkeeping infractions as a County Correction Officer and incomplete application are indicative of the appellant’s exercise of poor judgment, which is not conducive to the performance of the duties of a Police Officer. In this regard, it is recognized that a Police Officer is a law enforcement employee who must help keep order and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). The public expects Police Officers to present a personal background that exhibits respect for the law and rules. Since the factors discussed above provide a sufficient basis to remove the appellant’s name from the subject eligible list, it is unnecessary to determine whether an unsatisfactory criminal record also provides a basis to remove his name.

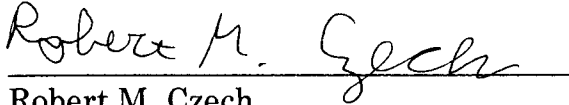
Finally, although the appellant alleges discrimination against veterans, the appointing authority denies such discrimination and the appellant provides no substantive evidence to support his mere allegations. Accordingly, such allegations do not evidence that the appointing authority took any improper action or that his removal from the subject eligible list was unwarranted.

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 23RD DAY OF NOVEMBER, 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

Attachment

- c. Peter Eichen
Susan A. Minock
Thomas G. Gannon, Esq.
Kelly Glenn



Chris Christie
Governor
Kim Guadagno
Lt. Governor

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

Robert M. Czech
Chair/Chief Executive Officer

June 29, 2015

Peter Eichen	Jurisdiction: Beachwood Title: Police Officer Symbol: S9999R Certification No: OL140938 Certification Date: 07/14/2014
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Initial Determination: Removed – Unsatisfactory Background Record

This is in response to your letter, received by this office on May 20, 2014, regarding your appeal which removed your name from the above 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".

In support of its decision, the Appointing Authority provided a narrative and related pages of your Background Report which includes multiple motor vehicle summonses; a disciplinary incident at one of your prior employers which involved a falsification of a public record; and an arrest for disorderly conduct in Seaside Heights on June 7, 2009. These are the only factors which supported the disposition assigned to you by the Appointing Authority.

You have provided a statement indicating that you believe that you should not be removed from the eligible list, because the Disorderly Persons charge was dismissed through the court process and you listed the motor vehicle incidents and occurrences, as well as the discipline meted out by the Ocean County Department of Corrections, to the best of your knowledge. Furthermore, the discipline was in the form of a verbal counseling. You also address many other issues that were present in the background report; however, as previously stated, these items carried no weight and therefore had no bearing on the disposition used by the Appointing Authority.

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 decision to remove your name has been sustained and the appeal is denied.

In accordance with Merit System Rules, this decision may be appealed 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 (C44:10-55 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
Human Resource Consultant
Local Placement Services

Susan A Minock
Beachwood Borough Clerk
1600 Pinewald Road
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