



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Franklin Perez,  
Police Officer (S9999R), Linden

CSC Docket No. 2016-1078

List Removal Appeal

ISSUED: **NOV 23 2016** (WR)

Franklin Perez appeals the removal of his name from the eligible list for Police Officer (S9999R), Linden, on the basis of having unsatisfactory driving and criminal records and for falsifying his employment application.

The appellant, a nonveteran, took the open competitive examination for Police Officer (S9999R), Linden, achieved a passing score, and was ranked on the subsequent eligible list.<sup>1</sup> The appellant's name was certified on April 29, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list due to having unsatisfactory driving and criminal records and for falsifying his employment application. Specifically, it asserted that the appellant had his driver's license suspended three times between August 28, 2012 and August 16, 2013 for failure to pay parking tickets and failed to include two motor vehicle tickets dated May 23, 2008 and July 23, 2009 on his employment application, despite being required to do so. It also claimed that the appellant was arrested in 2011 for forgery and exhibiting a fraudulent insurance card, but indicated that the charges were subsequently downgraded to a municipal ordinance violation, to which the appellant pleaded guilty.<sup>2</sup> In support of its

<sup>1</sup> Personnel records indicate that the eligible list promulgated on May 2, 2014 and expires on May 1, 2016.

<sup>2</sup> It is noted that the arrest report for the incident stated that the appellant's vehicle was found to have a fraudulent temporary registration tag and the appellant presented an insurance card with an invalid policy number. The appointing authority asserted that when asked about the incident, the appellant provided documentation that did not match the information contained in the police report.

request, it submits, *inter alia*, a summary of its investigation of the appellant's background.<sup>3</sup>

On appeal to the Civil Service Commission (Commission), the appellant briefly explains the 12 traffic violations on his driver's abstract which date from November 17, 2011 to March 26, 2014. He claims that the appointing authority told him that his driving record would not affect its decision to hire him. The appellant also notes that many of these violations occurred while the appellant was working as a driver and contends that he was not at fault for "the majority of them." The appellant states that he is currently "a responsible individual" and should not be penalized for his poor judgment in the past. Finally, the appellant questions whether his removal from the subject eligible list was due to nepotism.<sup>4</sup>

Despite the opportunity, the appointing authority did not respond.

### CONCLUSION

*N.J.S.A.* 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)(4), provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. *See Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relates to the position of Police Officer. 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;

---

<sup>3</sup> The investigator notes that the appellant was highly recommended by his employer, neighbors, family members and a former girlfriend for the subject position. For example, one acquaintance said that the appellant "remains calm under stress and would be a good police officer candidate," and another acquaintance said that the appellant was "honest and reliable."

<sup>4</sup> The Commission notes that while the appellant does not address his criminal history or the alleged falsification of his employment application, he is aware that they were used as grounds to remove him from the subject eligible list because he states in his initial appeal letter, dated July 8, 2015, that he was "no longer qualified for the position due to [his] driver's abstract, criminal history and failure to complete information on [his] application." However, in returning the certification, the appointing authority only stated that the appellant's name should be removed because he failed to include two motor vehicle incidents on his application because they were not included in the five year driving abstract he obtained from the Motor Vehicle Commission.

- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the [Commission] or designee may determine. See *N.J.A.C. 4A:4-4.7(a)4ii*; see also, *N.J.S.A. 2C:52-27(c)*.

*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 or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. The Commission, in its discretion, also 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)9*, allows the Commission to remove an eligible's name from an employment 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. *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 or her name from an eligible list was in error.

Regarding the appellant's driving record, the record reflects that the appellant was cited 12 times from November 17, 2011 to March 26, 2014, including three instances where his driver's license was suspended for failure to pay fines. In the instant matter, the appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Police Officer. These violations evidence disregard for the motor vehicle laws and the exercise of poor judgment. While the appellant explains each incident and contends that many of these violations occurred while he was working as a driver and he was not at fault, it is clear that the appellant's driving record shows a pattern of disregard for the law and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a position as a municipal Police Officer. Additionally, the Commission is greatly troubled by the great number of such incidents over a relatively short period of time, especially

considering they occurred no earlier than four years before his name was certified from the subject eligible list.

With respect to the allegation that the appellant falsified his employment application, the record indicates that although the appellant listed the majority of his motor vehicle violations, he failed to list two that occurred in May 23, 2008 and July 23, 2009, respectively. As indicated above, the appellant apparently informed the appointing authority that he did not include the two incidents because they were not included in the five year abstract he obtained from the Motor Vehicle Commission. While it does not appear from the record that the appellant attempted to deceive the appointing authority, he nevertheless should have listed those two incidents on his employment application.

Regarding the appellant's 2011 arrest for fraud and use of a fraudulent insurance card, it must be noted that at the time of his arrest, he was 23 years old and it occurred only four years prior to the issuance of the instant certification. While the charges were later downgraded to municipal offense violations, to which the appellant pleaded guilty and the incident appears to be an isolated event, the Commission is troubled by the appellant's lack of explanation with regard to this incident on appeal. Moreover, the fact that the appellant was involved in such activity, as well as his poor driving record and his failure to list all of his driving offenses on his application, 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) (A conviction for a disorderly persons offense is a reflection upon a candidate's character and his or her ability to perform the duties of the position of Police Officer). In this regard, Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an 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.

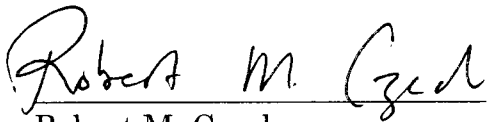
For the reasons detailed above, the appellant has failed to meet his burden of proof in the matter and a sufficient basis exists in the record to remove the appellant's name from the eligible list for Police Officer (S9999R), Linden. Finally, it must be noted that the appellant's background evidences an individual who has worked hard to improve himself and is highly recommended by all of those contacted by the appointing authority. Under these circumstances, the Commission observes that the grounds outlined in this decision may not, in the future, be enough to remove him from future certifications, provided that he maintains clean driving and criminal records and that he does not omit any information on his future employment applications.

**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 23<sup>rd</sup> DAY OF NOVEMBER, 2016



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Franklin Perez  
Alexis Zach  
Kelly Glenn  
Records Center

