



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Juan Sosa, Police
Officer (S9999R), Woodbridge

CSC Docket No. 2015-3132

List Removal

ISSUED: NOV 29 2016 (LDH)

Juan Sosa appeals the attached decision of the Division of Agency Services (DAS), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Police Officer (S9999R), Woodbridge eligible list on the basis of an unsatisfactory background.

The appellant's name appeared as the seventh ranked disabled veteran on the May 22, 2014 certification from the eligible list for Police Officer (S9999R), Woodbridge. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background. In support, the appointing authority submitted, *inter alia*, a Woodbridge Police Department Internal Affairs Report which stated that the appellant was involved in a domestic dispute at his home on July 4, 2010. Thereafter, the appellant was arrested for simple assault and served with a Temporary Restraining Order (TRO). The appointing authority also submits a July 19, 2010 Order of Dismissal, dismissing the TRO and the charge of simple assault. The appellant appealed his removal and argued that the charge and TRO were dismissed, and his current employer, Middlesex Sheriff's Office,¹ returned him to full duty. Moreover, he maintained that there were no further incidents of domestic violence and his wife supports him in his goal of becoming a Police Officer. Based on the foregoing, DAS

¹ Agency records indicate he is currently serving in the title of Sheriff Officer for Middlesex County Sheriff's Office.

found that the appointing authority had sufficiently supported and documented its decision to remove the appellant's name from the eligible list.

On appeal to the Civil Service Commission (Commission), the appellant argues that there is "no pattern of uncharacteristic behavior" to substantiate his removal from the eligible list. He points out that all charges related to the July 4, 2010 incident were dismissed and that a dismissed domestic violence incident alone is not a sufficient reason to support his removal from the subject eligible list. Thus, the appellant argues that his removal from the subject eligible list was unwarranted.

In response, the appointing authority argues that the appellant's criminal background warrants his removal. In this regard, the appointing authority maintains that it can consider an applicant's arrest in determining his qualifications for a law enforcement position. The appointing authority states that it took into account the circumstances surrounding the arrest when it removed the appellant from the subject eligible list. Specifically, it notes that the police report stated that the appellant "proceeded to grab her [appellant's wife] by her right arm while the victim was holding their seven month old daughter, then began to twist her right arm causing her to fall to the floor, in the presence of her five year old son." The police report further states that the victim experienced some slight redness to her right arm but declined any medical attention. Additionally, the appointing authority argues that when it investigated the incident, the appellant's wife changed her story to downplay the appellant's involvement but confirmed that the appellant grabbed her arm causing her to fall. Thus, the appointing authority maintains that the appellant's unsatisfactory background warrants removal from the subject eligible list. In support, it submits, *inter alia*, a July 4, 2010 Police Report, order of dismissal for the TRO, the complaint for the July 4, 2010 incident and the New Jersey Attorney General Departmental Policy of Handling of Domestic Violence Incidents Involving Law Enforcement Officers (Policy).

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).

It is recognized that a municipal Police Officer is a law enforcement employee who must enforce 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 an image of the utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560, 566 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also *In re Phillips*, 117 *N.J.* 567 (1990).

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. Further, *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.

In the instant matter, the appellant's removal from the subject eligible list was justified. The record reveals that the appellant was arrested for simple assault and issued a TRO for a domestic violence incident. Clearly, the appellant's criminal record adversely relates to the position sought. It is up to the discretion of the appointing authority whether to remove the appellant on his criminal background based upon a review of all of the circumstances surrounding the incident. Here, the appointing authority chose not to ignore the appellant's domestic violence incident. The circumstances surrounding the incident are particularly shocking as the appellant, who at the time was serving as a Sheriff's Officer, is alleged to have grabbed his wife's arm, causing her to fall and that the responding Police Officers

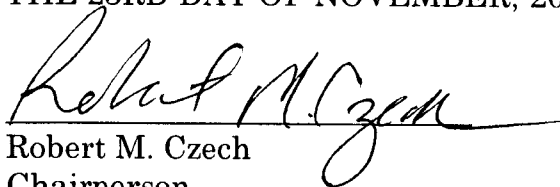
observed redness to her right arm. The Commission is also mindful of the fact that the incident occurred only four years prior to the issuance of the instant certification. Though the appellant's record only evidences one arrest, the Commission has previously upheld a removal from an eligible list based on one arrest. See *In the Matter of Ritchie Ortiz* (MSB, decided June 26, 2002) (Proper to remove an eligible from the Parole Officer Recruit eligible list based on his arrest on charges of aggravated assault, possession of a weapon for an unlawful purpose, and possession of a weapon five years prior to his consideration for employment). Moreover, the public expects Police Officers to present a personal background that exhibits respect for the law and rules. In this regard, the appointing authority's Policy is to screen out candidates during the hiring process with a history of domestic violence incidents. The appellant violated that trust when he was arrested and charged with simple assault. Furthermore, the appellant has failed to establish that the appointing authority's removal of his name from the subject eligible list was in error. Accordingly, under these circumstances, the appointing authority has demonstrated that the appellant's criminal background constituted sufficient cause to remove his name from the eligible list for Police Officer (S9999R), Woodbridge.

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
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Juan Sosa
Brett Pugach, Esq.
Robert Landolfi
Kelly Glenn
Records Center



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF 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

May 6, 2015

Mr. Juan Sosa	Title: POLICE OFFICER Symbol: S9999R Jurisdiction: WOODBRIDGE Certification Number: OL140674 Certification Date: 11/22/2014 5/22/2014
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Initial Determination: Removal – Unsatisfactory background report

This is in response to your correspondence contesting the removal of your name from the referenced 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. Other sufficient reasons include, but are not limited to, an unsatisfactory background report.

In support of its decision, the Appointing Authority provided a Woodbridge Police Department Internal Affairs Report which states that following your involvement in a domestic dispute at your home on July 4, 2010, a warrant was issued; you were subsequently arrested for simple assault and served with a Temporary Restraining Order (TRO).

In your letter, you state that with exception of the 2010 incident, you have had an exemplary career as a Sheriff's Officer. Shortly after being served with the TRO, it was dropped at the victim's request. You indicate that after meeting all requirements of a domestic violence incident, you were restored to full duty by your current employer, Middlesex County Sheriff. You are requesting reversal of the Appointing Authority's decision to disqualify you.

Recognizing the nature of the position at issue, the Appointing Authority may consider your background when determining eligibility for the position of Police Officer. Despite your arguments, the facts of the 2010 incident leading to your arrest, revealed behavior uncharacteristic of a law enforcement officer which the Appointing Authority chose not to ignore.

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 your appeal is denied.

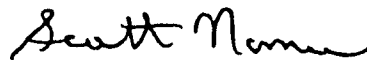
Mr. Juan Sosa
RE: OL140674
May 6, 2015
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In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and 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,



Scott Nance, Supervisor
Local Certifications

c: Robert M. Landolfi

