



B-17

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Joseph Mirambeaux,  
Police Officer (S9999R), City of  
Newark

List Removal Appeal

CSC Docket No. 2016-3017

ISSUED: **DEC 22 2016** (ABR)

Joseph Mirambeaux, represented by Charles M. Grossman, Esq., appeals the decision of the appointing authority to remove his name from the Police Officer (S9999R), City of Newark (Newark) eligible list on the basis of an unsatisfactory driving record and the falsification of his application.

The appellant took the open competitive examination for Police Officer (S9999R), Newark, which had a closing date of September 4, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The subject eligible list promulgated on May 2, 2014 and expires on May 1, 2017. The appellant's name was certified to the appointing authority on August 27, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory driving record and falsification of his Background Investigation Questionnaire (Questionnaire). The appointing authority asserted that the appellant's driving record included two motor vehicle accidents in August 2006 and September 2009; nine violations between June 2005 and November 2012; ten driver's license suspensions between December 2003 and August 2011; and three traffic warrants issued in 2005, 2009 and 2010. Specifically, the appellant's driver's abstract listed two suspensions in December 2003 and August 2006 for failing to appear in court; one suspension in January 2006 for failing to comply with a court order; one suspension in September 2008 for operating a vehicle during a suspension period; five suspensions for non-payment of insurance surcharges in January 2009, December 2009, June 2010, February 2011 and June 2011; and one suspension pursuant to the Parking Offense Adjudication Act in February 2011 for unpaid parking tickets. The appointing authority's

background investigation revealed that the appellant was arrested in Belleville Township (Belleville) in 2005, in Clifton Township in 2009 and in the City of Passaic in 2010 pursuant to traffic warrants generated by unpaid fines and tickets. The appellant's driver's abstract also showed nine violations between June 2005 and November 2012, including three citations for improper display/fictitious plates, one citation for an improper turn, one citation for careless driving, one citation for unsafe operation of a motor vehicle, two citations for operating a motor vehicle during a suspension period, and one citation for failure to wear a seatbelt. Lastly, the appointing authority claimed that the appellant falsified his Questionnaire by not listing all of his prior residences in answer to question 11 and for failing to list his work with the Nutley Volunteer Emergency & Rescue Squad, Inc. (Nutley VERS) in response to the question regarding his former employment.

On appeal to the Civil Service Commission (Commission), the appellant argues that his driving record does not support his removal from the subject eligible list because his only serious motor vehicle violation involved a March 2006 incident where he was charged with an unsafe lane change in violation of *N.J.S.A. 39:4-88* and ultimately pled guilty to the lesser violation of unsafe operation of a motor vehicle under *N.J.S.A. 39:4-97.2* in June 2008. The appellant explains that the \$250.00 surcharge imposed under *N.J.S.A. 39:4-97.2* caused him tremendous hardship because he was not working at the time of the June 2008 conviction. The appellant also attributes the subsequent suspensions of his driver's license to financial hardship, claiming that he was, at times, unable to make timely payments of an insurance surcharge that was later assessed against him for three years. The appellant stresses that he made the requisite payments as soon as he had earned the money needed to pay that fee and claims that the same held true with his unpaid parking tickets. The appellant acknowledges that the Passaic Municipal Court (Passaic) issued a bench warrant against him after he failed to appear for a court hearing in 2010. He explains that he failed to appear because of confusion on his part about the hearing date, but stresses that he promptly paid the amount that was due and owing as soon as he became aware of the warrant. The appellant notes that the tickets at issue in that matter involved minor violations, namely parking tickets and not possessing his license and registration when stopped by police officers. He adds that the remaining violations in his driving record were for operating his vehicle without having his driver's license and registration in his possession, rather than for serious moving violations. The appellant acknowledges that he was partially responsible for one minor accident in Belleville, but stresses that he was not at fault in the other collision noted by the appointing authority's background investigator. Instead, he contends that the second accident involved another driver striking his vehicle from behind. Additionally, the appellant argues that he should be evaluated differently from an average motorist because he is a highly trained and skilled operator of complicated emergency vehicles who has proven that he can operate safely under tremendous pressure. He submits letters of support from Richard Budris, Crew Chief for Nutley VERS and Michael J. Rossi,

EMS Coordinator for Nutley VERS, both of whom attest to his strong performance as an Emergency Medical Technician (EMT) and driver while responding to emergency calls. The appellant also provides copies of certificates he earned through EMT-related training with the FEMA Emergency Management Institute, the American Heart Association, Alps Rescue Services, the New Jersey Office of Emergency Medical Services, and the Monmouth-Ocean Hospital Corporation.

Finally, the appellant argues that his failure to list his complete residency and employment history in the Questionnaire was a good-faith error that resulted after Newark's investigating officer misinformed him about what information needed to be provided therein. The appellant claims that the investigating officer told him that he only needed to list his current residence in the Questionnaire since he had resided there for more than 10 years and that he did not have to list his experience with Nutley VERS under the Employment History section of the Questionnaire because it was unpaid work. However, the appellant notes that he did list his work with Nutley VERS in response to the question concerning volunteer/community activities he had engaged in during the preceding five years.

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, argues that it appropriately removed the appellant from the subject eligible list based upon his driving record and falsification of his Questionnaire. The appointing authority contends that the appellant's driving record, particularly his history of driver's license suspensions and traffic warrants, proves a pattern of disregard for the law, does not meet the standards of its pre-employment processing criteria and supports his removal from the subject eligible list. Specifically, it cites the appellant's failure to meet its driving record standards because he had more than two driver's license suspensions and a driving record that established a pattern of traffic warrants generated by unpaid fines and parking tickets. It notes that the 2010 Passaic bench warrant was relatively recent, having been issued approximately three years before the closing date for the subject examination. The appointing authority argues that even with the appellant's experience and training as an EMT, his driving record must be viewed objectively and that he must be held to the same standard as all other applicants. Finally, the appointing authority contends that the appellant did not provide a proper certification to support his explanation of his driving record and that even if his explanation were accepted, it would not negate or excuse the appellant's conduct.

In this regard, it argues that the appellant's driving record demonstrates a disrespect for the law and reflects poorly upon his ability to perform the duties of a Police Officer, including the essential function of operating a motor vehicle. With respect to his falsification of the Questionnaire, the appointing authority contends that the appellant only listed his current residence on the Questionnaire and did not disclose his previous residences, as required. Additionally, the appointing authority cites the appellant's failure to disclose his employment with Nutley VERS

in the employment section of the Questionnaire in accordance with the instructions, which direct applicants to disclose their full employment history since age 16 in further support of the appellant's removal from the subject eligible list.

### 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. 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 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. *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.

A review of the record demonstrates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list on the basis of an unsatisfactory driving record. At the outset, the Commission emphasizes that it is not bound by the criteria utilized by the appointing authority and that each list removal is decided on the basis of the record presented. *See In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005). *See also, In the Matter of Debra Dygon* (MSB, decided May 23, 2000). In the instant matter, the appellant contends that his driving record does not support his removal from the subject eligible list. He argues that a guilty plea for unsafe operation of a motor vehicle is the only significant moving violation in his driving record and that aside from a minor motor vehicle accident in Belleville that he was partially responsible for, the infractions on his record do not show any issues with his ability to consistently operate motor vehicles in a safe manner. He adds that he possesses an exemplary record driving vehicles as an EMT responding to emergency calls. The appellant submits letters of support from Richard Budris and Michael J. Rossi of Nutley VERS, who attest to his safety record. However, 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. The appellant's history of violations, license suspensions, and traffic warrants for unpaid parking tickets and fines evidence disregard for the motor vehicle laws and the exercise of poor judgment. The appellant claims that the issues in his driving record related to unpaid fines and parking tickets, including multiple failures to pay an insurance surcharge, are the product of financial hardship. The appellant explains that the bench warrant issued by Passaic in 2010 was the result of an honest mistake where he failed to appear in court due to confusion about the hearing date. However, he does not address the December 2003 and August 2006 suspensions of his driver's license for failure to appear for court hearings. Nor does he explain the January 2006 suspension for failing to comply with a court order or the September 2008 suspension for operating a motor vehicle during a suspension period. While the Commission is mindful of the appellant's EMT training, experience with Nutley VERS and efforts to remedy his driving record, 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. Accordingly, the foregoing demonstrates sufficient grounds to remove the appellant's name from the subject eligible list on the basis of an unsatisfactory driving record.

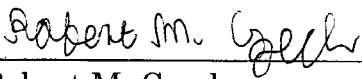
It is, therefore, unnecessary to determine whether the appellant's omission of information related to his prior residences and employment history supports the removal of his name from the subject eligible list on the basis of a falsified application.

### 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 21<sup>ST</sup> DAY OF DECEMBER, 2016

  
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