



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE  
ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Eric Groething and  
Keith O'Brien, Fire Fighter  
(M1544T), Jersey City

CSC Docket Nos. 2017-2385 and  
2017-2563

List Removal Appeals

**ISSUED: NOVEMBER 17, 2017  
(CSM)**

Eric Groething, represented by Michael L. Prigoff, Esq., appeals the removal of his name from the eligible list for Fire Fighter (M1544T), Jersey City, on the basis of an unsatisfactory background report. Keith O'Brien, represented by Mr. Prigoff, appeals the removal of his name from the eligible list for Fire Fighter (M1544T), Jersey City, on the basis of an unsatisfactory criminal record. These appeals have been consolidated due to common issues presented.

In disposing of the August 17, 2016 certification (OL160983), the appointing authority requested removal of Groething's name from the eligible list, contending that he had an unsatisfactory background report. Specifically, the appointing authority indicated that Groething, in his capacity as a Police Officer with the City of Plainfield, was the subject of a discrimination complaint. It also indicated that the appellant was suspended from his position as a Police Officer on April 28, 2015 for 16 hours for simple assault. In disposing of the March 17, 2016 certification (OL160306), the appointing authority requested the removal of O'Brien's name, a veteran, contending that he had an unsatisfactory criminal record. Specifically, the appointing authority indicated that the appellant was removed from his position as a Police Officer with the Jersey City Police Department due to a positive drug test effective December 5, 2013; was arrested for possession of cocaine in June 1998; had his driver's license suspended on three occasions between 2000 and 2013, once for a DWI in 2000.

On appeal, the appellants state that they should not be removed from the list and indicate that they requested that the appointing authority provide them the documentation it provided to the Civil Service Commission (Commission) in support of its request to remove their names from the list. Thereafter, by correspondence dated March 30, 2017, the Division of Appeals and Regulatory Affairs (DARA) acknowledged the appellants' appeals and advised the appointing authority to submit all documentation in support of its request to remove the appellants' name from the list to the appellants and provided it the opportunity to present any additional argument or information in response to the appellants' appeals. By letters dated May 15, 2017, the appellants indicated that appointing authority had not provided them with the information it submitted to the Commission in support of its request to remove their names from the list. In this regard, by letters dated February 8, 2017 (O'Brien) and February 10, 2017 (Groething), they had requested that the appointing authority provide them with all documents it relied on when it requested the removal of their names from the list. As the appointing authority had not provided them with any information regarding its request to remove their names, the appellants argues that their name should be restored to the subject list.

Although provided the opportunity, the appointing authority has not provided any additional information or argument for the Commission to review in these matters.

### CONCLUSION

Initially, when an appointing authority disposes of a certification and requests to remove an individual's name from the list, *N.J.A.C. 4A:4-4.7(b)* requires that it submit to the appropriate representative of the Commission, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request. In other words, before the Division of Agency Services (Agency Services) can record a certification as properly disposed, the appointing authority must submit to it any documentation, such as an individual's driver's abstract, relevant application materials, copies of postmarked envelopes, etc., to ensure that a documented basis is in the record to support the request. After the certification is recorded as disposed by Agency Services, individuals listed on the certification are issued a Certification Disposition Notice that specifies the basis as to why an appointing authority requested the removal of the individual's name from the list and provides individuals instructions regarding how to appeal the determination to the Commission.

Upon request (in non-psychological disqualification appeals only) of the material or if he/she files an appeal of the list removal, *N.J.A.C. 4A:4-7(b)1* states that *the appointing authority shall* provide the eligible with copies of all materials sent to the appropriate Commission representative. This means that upon request or appeal, *the appointing authority is required to provide the information* it sent to



Agency Services in support of removing an eligible's name from the list when it initially disposed of the certification. However, an appointing authority's failure to provide this information to an individual who has appealed the removal of his or her name to the Commission *does not* necessarily warrant the restoration of his or her name to the eligible list. In this regard, *N.J.A.C. 4A:4-4.7(b)2* states that if an appointing authority fails to provide the eligible with copies of materials, the request *may* be denied. The Commission emphasizes that *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. Thus, it is crucial for an appointing authority to expeditiously provide the appellant the information it sent to the Commission representative in support of its request to remove his or her name from the list upon his or her request or upon the filing of an appeal to the Commission.

At this juncture, it cannot be ignored that in appeals involving the removal of an eligible's name from a list, Agency Services has already determined that there are sufficient grounds to remove the individual's name from the list since it has recorded the certification as disposed and advised the eligible of appeal rights to the Commission. *See N.J.A.C. 4A:4-4.7(c)*. Further, while there are other means by which an appellant can obtain this information in order to challenge the determination, such as through the appeal file review process offered by in *N.J.A.C. 4A:2-1.1(d)*, the intent of *N.J.A.C. 4A:4-4.7(b)1* is to ensure that the appointing authority, as the other party in these types of appeals, serve copies of all materials to every other party. In essence, this requirement echoes the obligation set forth in *N.J.A.C. 4A:4-6.3(f)* and *N.J.A.C. 4A:2-2.1(b)1*, which mandates that each party of appeal serve copies of all materials submitted on all other parties. The Commission has serious concerns in this case with respect to Jersey City's failure to provide the information after both appellants and DARA requested it to do so. Therefore, Jersey City is warned that if in the future it does not strictly comply with its obligation to provide the information required by *N.J.A.C. 4A:4-4.7(b)1* to appellants who file appeals, its failure to do so may result in the imposition of fines or other appropriate actions.

*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 removal of 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. *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, while the appellants sought to obtain information concerning the removal of their names from the appointing authority, there is no record of them contacting this agency to review the appeal file which contains the documentation provided by the appointing authority in support of its request to remove their names from the list. As noted earlier, *N.J.A.C. 4A:4-4.7(b)2* does not mandate restoration of an individual's name to the list and to simply restore an eligible's name to the list if the underlying merits in the record otherwise support the removal is contrary to Civil Service law and rules.

With respect to Groething, the record reflects that he received minor disciplinary action as a Police Officer within one year prior to his name being certified for appointment and he was named in a discrimination complaint that had not yet been finally adjudicated. Generally, the Commission has determined that minor disciplinary actions do not constitute a sufficiently adverse employment record to justify the removal of an eligible's name from a list. In these situations, it has found that an applicant with a minor disciplinary history, such as documented attendance or performance issues, could be bypassed by an appointing authority at its discretion under *N.J.A.C. 4A:4-4.8*. See *In the Matter of Laura Verdi* (CSC, decided July 30, 2008) (Commission determined that attendance issues provided by the appointing authority, for which appellant never received major discipline, were not sufficient to remove her name from the list); *In the Matter of Walter Langdon* (MSB, decided October 14, 1998) (Minor disciplines insufficient absent other evidence to remove employee, but sufficient to bypass employee on list for County Correction Sergeant). Groething has served as a Police Officer since 2009 and this one minor disciplinary infraction over the course of an eight-year career and simply being named in a complaint does not provide a basis on which to remove his name from the subject list due to an adverse background report. However, Jersey City could use the fact that he received minor discipline within one year of the issuance of the certification of the subject list as a basis to bypass him in accordance with the Rule of Three. Therefore Groething's name should be restored to the subject list for prospective employment opportunities only and his name be recorded on certification (OL160983) as bypassed.

Regarding O'Brien, he was removed from his prior position as a Police Officer effective December 5, 2013. *N.J.A.C. 4A:4-6.1(a)(5)* states that a person may be denied appointment when he or she has been removed from public service for disciplinary reasons after an opportunity for a hearing. O'Brien appealed his removal as a Police Officer with Jersey City to the Commission, which upheld his removal effective December 5, 2013. See *In the Matter of Keith O'Brien, Jersey City Police Department* (CSC, decided February 4, 2015). In considering the nature of the Fire Fighter position, and the fact that appellant served in law enforcement, there is no evidence in the record that the appointing authority's decision to remove his name from the list was in error. In this regard, it is recognized that a firefighter occupies a highly visible and sensitive position within the community and the

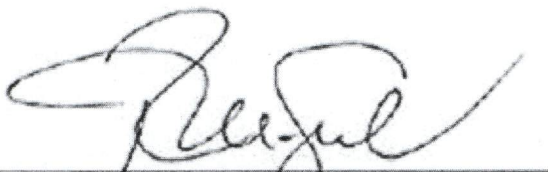
standard for an applicant includes a good character and utmost confidence and trust. Therefore, based on *N.J.A.C. 4A:4-6.1(a)(5)*, the Commission finds a sufficient basis to remove O'Brien's name from the Fire Fighter (M1544T), Jersey City eligible list.

### ORDER

Therefore, it is ordered that the appeal of Eric Groething be granted, his name be restored to the Fire Fighter (M1544T), Jersey City eligible list, but recorded on certification (OL160983) as bypassed. It is further ordered that the appeal of Keith O'Brien 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 15<sup>TH</sup> DAY OF NOVEMBER, 2017



Robert M. Czedo, Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Eric Groething  
Keith O'Brien  
Michael L. Prigoff, Esq.  
Stephanie A. Brown, Assistant Corporation Counsel  
Kelly Glenn