



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Edson Pereira, Fire
Fighter (M1545T), Kearny

CSC Docket No. 2017-2259

List Removal Appeal

ISSUED: NOVEMBER 17, 2017
(CSM)

Edson Pereira, represented by Michael L. Prigoff, Esq., appeals the appointing authority's request to remove his name from the Fire Fighter (M1545T), Kearny eligible list on the basis on an unsatisfactory background report.

The appellant's name was certified in the 438th position on certification OL160647. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory background report. Specifically, the appointing authority indicated that the appellant was charged with impersonating a law enforcement officer on April 3, 2014 and found guilty of disorderly conduct – improper behavior on June 234, 2014. Additionally, the appointing authority found that the appellant was charged and found guilty of receiving stolen property in September 2004 and disorderly conduct in August 2008. Finally, the appointing authority indicated that the appellant's driving record reflected eight driving violations between 2008 and 2012, which included two 30-day license suspensions.

On appeal to the Civil Service Commission (Commission), the appellant states that he was arrested and charged with three criminal matters in his lifetime. The first in 2004 when he was a juvenile when he took an abandoned car that was parked in front of his godmother's house for a joyride. In 2008, the appellant states he was pulled over in New York State while driving, and, without probable cause, the Sheriff's Officer required that he get out of the car to search him. As he was being searched, the appellant explains that he attempted to video record the officer's actions that resulted in him being handcuffed and charged with disorderly

conduct and resisting arrest. In March 2016, the appellant presents that he was employed by a pharmacy and was delivering a prescription to an adult care center, which required him to briefly park his car outside of a restaurant frequented by Newark police officers. The appellant asserts that the restaurant owner was upset with the fact that he left his car in front of his establishment and used his contacts with the police department to retaliate against the appellant by claiming that he was impersonating a police officer. The appellant denied under certification that he was attempting to impersonate a police officer, but surmises that the restaurant owner may have seen a "family police badge" that his father-in-law had given him while he was putting a receipt for the medication in his wallet before he reentered his vehicle. Given that he was required to forfeit his passport as a result of the original charge and impending pre-paid travel plans, the appellant states that he reluctantly agreed to a reduced charge to regain his passport even though he committed no offense. The appellant maintains that none of these incidents warrant the removal of his name from the list and notes that the only reason indicated by the appointing authority for his removal was his criminal arrests, not his driving record. Therefore, the appellant maintains that his name should be restored to the list.

The appointing authority has not provided any additional argument or information for the Commission to review in this matter.

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, firefighter or correction officer and other titles as determined by the Commission. 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 well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to their proper and effective functioning. *Dugan v. Police Department, City of Camden*, 112 N.J. Super. 482 (App. Div. 1970), cert. denied, 58 N.J. 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority when requested for purposes of making a hiring decision. However, although it is clear that the appellant was never convicted of a crime as a juvenile, he has been arrested on several occasions. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Although the appellant's arrest and convictions were for a disorderly persons offense and cannot give rise to the disability arising under N.J.A.C. 4A:4-4.7(a)4, the fact that the appellant was involved in such activity 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).

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.

In the matter at hand, the record establishes that the appellant has had three adverse contacts with law enforcement from 2004 through 2014. Indeed, the appellant's last arrest occurred on April 3, 2014, only two years prior to his name being certified for appointment consideration. Additionally, the appointing authority provided a copy of page 7 of the appellant's application listing his eight motor vehicle violations between 2008 and 2012, including two licensure suspensions for 30 days due to speeding, when it disposed of the certification as evidence of its concern with the appellant's background. It is noted that the removal of eligibles from Fire Fighter lists on the basis of an adverse background have been upheld. See *In the Matter of James Alessio* (MSB, decided March 9, 1999). In that case, the eligible attempted to deceive the appointing authority in regard to his three prior arrests and the actual reason supporting his separation from the Postal Service, i.e., his 1992 conviction for a federal offense which was committed during this employment. In *Alessio, supra*, it was concluded that such disregard is unacceptable in a Fire Fighter who operates in the context of a paramilitary organization in which the ability to follow orders is crucial to saving

lives. *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998) was relied upon in that matter, in which the Supreme Court stated:

Firefighters are not only entrusted with the duty to fight fire; they must also be able to work with the general public and other municipal employees, especially police officers, because the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship places at risk the citizens of the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police departments at a fire.

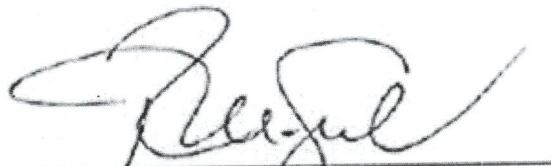
Although the appellant states that none of his encounters with law enforcement were either justified or should be disregarded, it cannot be ignored that his last arrest for which he was guilty occurred in 2014. In this case, the appellant's multiple, consistent adverse contacts over the years, either through arrests or driving violations, are relevant to the position sought, as such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Fire Fighter. As noted above, the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. Accordingly, given the totality of the circumstances, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M1545T), Kearny eligible list.

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 15TH DAY OF NOVEMBER, 2017



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