



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Nick Castello, Fire Fighter (M1544T), Jersey City

CSC Docket No. 2017-2565

List Removal Appeal

ISSUED: MAY 23 2017 (CSM)

Nick Castello appeals the appointing authority's request to remove his name from the Fire Fighter (M1544T), Jersey City eligible list on the basis on an unsatisfactory background report.

The appellant's name was certified in the 16th position as a disabled veteran on certification OL160306. 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 arrested on May 4, 2002 for 2nd degree robbery and for larceny on August 29, 2002 but prosecution was declined in both cases. The appellant was also arrested and/or issued summons on September 28, 2003 and November 4, 2004 for being in a public park after hours, on August 7, 2004 for open container violations, on October 9, 2004 for possession of alcohol under age 21, and on December 30, 2005 for littering/urinating in public. Additionally, the appellant's license was suspended for one year effective July 2, 2006 for driving while intoxicated and he was arrested on September 21, 2009 while serving in the Marines for battery and assault with a deadly weapon. The appointing authority also found that the appellant was arrested on August 7, 2011 for possession of a controlled dangerous substance (CDS) which was dismissed after he completed Pre-Trial Intervention (PTI). In support of its request, the appointing authority provided copies of the appellant's arrest record, background investigation report, and documentation that he completed PTI on July 12, 2013.

On appeal to the Civil Service Commission (Commission), the appellant indicates that he needs all of the reasons why the appointing authority believed his

background adversely affects him for the position of Fire Fighter. By correspondence dated March 24, 2017, staff from the Division of Appeals and Regulatory Affairs (DARA) advised the appellant of the above information provided by the appointing authority in support of its request to remove his name from the list. The appellant was also advised that he had the burden of proof to show by a preponderance of the evidence that the appointing authority's decision to remove his name was in error. In reply, the appellant states that his two arrests in 2002 occurred while he was a juvenile and he was never prosecuted. Further, he states that this did not hinder him enlisting in the Marines and his honorable discharge. The appellant also states that the various summons he received from 2003 to 2005 were nothing more than civil, not criminal violations. With respect to his DWI, the appellant acknowledges that this was a horrible mistake, but he takes full responsibility for his actions and emphasizes that he has not committed any alcohol related offenses in ten years. Regarding the incident that occurred when he was in the Marine, the appellant states that it was not his fault and he provides a copy of a statement from the victim explaining what happened. He also notes that he is currently in the process of having the incident removed from his military records and is awaiting the results. With respect to his arrest for possessions of a CDS in 2011, the appellant presents that he had one pill of Clonazepam, which would not have been a problem if he had a prescription for the medication, and explains that he was going through a divorce at the time and did not know how to deal with his depression. However, he notes that he completed PTI, obtained a Bachelor's degree and has been working as a bellman/doorman. The appellant recognizes that he has had a few mishaps in his past, but given that none were felonies, maintains that his background does not warrant his removal from the list.

Although the appellant provided a letter dated February 2, 2017 indicating that he advised the appointing authority of his appeal and requesting the materials sent to this agency in support of its request, the appointing authority has not provided any additional argument or information for the Commission to review.

### 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).

Participation in the PTI Program is neither a conviction nor an acquittal. See *N.J.S.A. 2C:43-13(d)*. See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A. 2C:43-13(d)* provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, 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. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his name from the subject eligible list. Compare *In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

*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 numerous adverse contacts with law enforcement from 2002 through 2011. Indeed, the appellant's last arrest occurred on August 7, 2011, for possession of a CDS for which he completed PTI, only four years prior to the closing date for the subject examination. 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.

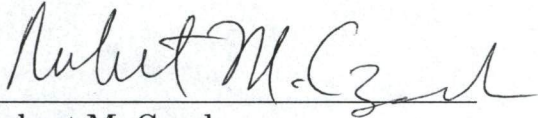
Although the appellant states that none of his encounters with law enforcement was for felonies and his military service and education evidence his rehabilitation, it cannot be ignored that his last arrest occurred in 2011, one year after he was discharged from the military. Moreover, he did not complete PTI until July 12, 2013. In this case, the appellant's multiple, consistent adverse contacts over the years 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 (M1544T), Jersey City 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 17<sup>TH</sup> DAY OF MAY, 2017



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