B-43

STATE OF NEW JERSEY

In the Matter of Roy Henry, Police Officer (S9999R), Newark

CSC Docket No. 2017-3508

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

List Removal Appeal

ISSUED: MAY 23 2017 (CSM)

Roy Henry appeals the removal of his name from the eligible list for Police Officer (S9999R), Newark, on the basis of an unsatisfactory background report.

By way of background, the appellant took the open competitive Law Enforcement Examination (LEE) (S9999R), achieved a passing score, and was ranked on the subsequent eligible list. Prior to the instant matter, the appellant's name was certified from the County Correction Officer (S9999R), Essex County and Police Officer (S9999R), East Orange eligible lists. The County Correction Officer certification (OL151498) was disposed on April 8 2016 and Essex County requested the removal of the appellant's name, asserting that he had an unsatisfactory background report. Subsequently, the appellant was removed from the (OL160095) certification of the (S9999R) list for Police Officer, East Orange for having an unsatisfactory driving history. The appellant appealed those matters to the Civil Service Commission (Commission), which upheld the removal of his name from the subject lists. In that consolidated matter, the Commission noted that since it upheld the appellant's removal for cause from the County Correction Officer list prior to the disposal of the certification for Police Officer, East Orange, which is a title area included for the unified LEE, his name is removed from the pool of eligibles for the other title areas. *See In the Matter of Roy Henry* (CSC, decided December 21, 2016) (see attached).

In the present matter, the appellant's name was certified to the Police Officer, Newark (S9999R) eligible list on February 24, 2016. In disposing of the certification on April 6, 2017 (OL160203), the appointing authority requested the removal of the appellant's name based on an unsatisfactory background report.

On appeal, the appellant states that he is appealing the removal of his name from the Police Officer (S9999R), Newark eligible list.

CONCLUSION

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.

N.J.A.C. 4A:4-4.7(g) states that when this agency has accepted a single application for one or more title areas, an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area.

In this matter, since the appellant's name was removed for cause from the County Correction Officer, Essex County and Police Officer, East Orange, lists, prior to the disposal of the certification for Police Officer, Newark on April 6, 2017, which is a title area included for the unified LEE, his name is removed from the pool of eligibles for the other title areas. Further, the appellant's appeals of his removals from the Essex County and East Orange lists were denied by the Commission on December 21, 2016. Therefore, his appeal of Newark's removal of his name from the Police Officer (S9999R) list is rendered moot.

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 17TH DAY OF MAY, 2017

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
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Attachment

c: Roy Henry
Jack Kelly
Kelly Glenn

B-13

STATE OF NEW JERSEY

In the Matter of Roy Henry, County Correction Officer (S9999R), Essex County and Police Officer (S9999R), East Orange	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket Nos. 2016-3859 and 2017-1164	List Removal Appeals

ISSUED: DEC 28 2017 (CSM)

Roy Henry appeals the removal of his name from the eligible list for County Correction Officer (S9999R), Essex County, on the basis of an unsatisfactory background report, and Police Officer (S9999R), East Orange on the basis of an unsatisfactory driving record. These appeals have been consolidated based on common issues presented.

The appellant took the open competitive Law Enforcement Examination (LEE) (S9999R), achieved a passing score, and was ranked on the subsequent eligible list. In disposing of the (OL151498) certification of the list for County Correction Officer on April 8 2016, Essex County requested the removal of the appellant's name, asserting that he had an unsatisfactory background report. Specifically, it provided the appellant's driver's abstract and automatic traffic system general inquiry records demonstrating that he received 94 traffic violations between 2009 and 2015. Additionally, Essex County found that the appellant was charged with giving false statements/false information to a law enforcement officer in May 2011 and pled guilty to a local ordinance violation. Further, it found that the appellant was charged with disorderly conduct in April 2009 and he pled guilty to a local ordinance violation. Moreover, the appellant was arrested in March and November 2010 but these charges were dismissed.

Subsequently, the appellant was removed from the (OL160095) certification of the (S9999R) list for Police Officer, East Orange for having an unsatisfactory driving history and also appeals that removal from the list.

On appeal, the appellant states that Essex County did not conduct a fair background investigation as his current employer was not contacted in order to determine such things as his work ethic. He also states that he was arrested for simple assault, not assault and that he was arrested for simulated documents, not giving false information to a law enforcement officer. In this regard, he states that these incidents occurred when he was younger and he has since matured and is now working full-time. The appellant states that he has received minor tickets in the past, but these were for brake lights or seat belt violations, and they have no bearing on the position he seeks. Additionally, he notes that he has had his record expunged and he is licensed to purchase a firearm in New Jersey. In support of his appeal, the appellant provides copies of his permit to purchase a firearm, expungement order, driver's abstract, and a letter of recommendation.

Although provided the opportunity, Essex County did not submit any additional information or argument for the Civil Service Commission (Commission) to review.

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 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. 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.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).

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 matter at hand, the record evidences that it was appropriate to remove the appellant's name from the subject list. The appellant's driver's abstract indicates that he received tickets for the following violations: unsafe operation of a motor vehicle in November 2008 and August 2010, speeding in December 2008, improper display/fictitious plates in March 2009, October 2009, February 2010, and March 2010, delaying traffic in June 2009, failure to wear seat belt in August 2009, February 2010, March 2010, February 2011, July 2011, February 2012, April 2013, and January 2015, maintenance of lamps in June 2010 and August 2014, failure to obey directional signal in October 2010, and no license, registration or insurance identification in possession in May 2011. The appellant's automatic traffic system general inquiry record contains multiple violations for such things as parking and safety glass requirements. While the appellant argues that these are essentially minor violations that have nothing to do with the position sought, such repeated conduct reveals a complete disregard for motor vehicle laws and is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a County Correction Officer. In this regard, it is recognized that a County Correction Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. County Correction Officers, like 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 utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J* 567 (1990). The public expects County Correction Officers to present a personal background that exhibits respect for the law and rules. These multiple violations do not demonstrate possession of these qualities.

Additionally, while the appellant contends that he was only arrested for simple assault, not assault, and simulated document, not providing false information to law enforcement officers, and that these matters were expunged, as

noted earlier, these incidents may be considered for law enforcement positions. Therefore, appellant's multiple negative encounters with law enforcement, in conjunction with his driving record, adversely relate to the position of County Correction Officer. Accordingly, Essex County has presented sufficient cause to remove the appellant's name from the subject eligible list.

Additionally, *N.J.A.C.* 4A:4-4.7(g) states that when this agency has accepted a single application for one or more title areas, an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area. Accordingly, since his name was removed for cause from the County Correction Officer list prior to the disposal of the certification for Police Officer, which is a title area included for the unified LEE, his name is removed from the pool of eligibles for the other title areas. Therefore, his appeal of East Orange's removal of his name from the Police Officer list is rendered moot. Regardless, it is clear that, as detailed above, the appellant's unsatisfactory driving record would support his removal from the list.

ORDER

Therefore, it is ordered that these appeals 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 21ST DAY OF DECEMBER, 2016

Robert M. Czech
Chairperson
Civil Service Commission

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c: Roy Henry
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