



STATE OF NEW JERSEY

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

In the Matter of Nolan Fdyfil, Fire
Fighter (M1544T), Jersey City

CSC Docket No. 2018-1362

Request for Reconsideration

ISSUED: MARCH 28, 2018

Nolan Fdyfil, represented by Michael L. Prigoff, Esq., requests reconsideration of the attached decision rendered on November 1, 2017, which upheld the removal of his name from the eligible list for Fire Fighter (M1544T), Jersey City, on the basis of an unsatisfactory background report.

By way of background, in disposing of the August 17, 2016 certification, the appointing authority requested removal of the appellant’s name from the eligible list, contending that he had an unsatisfactory background report. Specifically, the appointing authority indicated that the appellant admitted using marijuana within three years prior to his application for the subject examination, his lengthy adverse employment history and resulting terminations, two incidents that he was involved in with the Jersey City Police Department, repeated motor vehicle violations, and a false submission made during the application process regarding his social media page. The appellant appealed the matter to the Civil Service Commission (Commission), which found that although provided the documents by the appointing authority in support of its request to remove his name from the list, he did not present any information or argument that the removal of his name was in error. Regardless, the Commission determined that his contacts with law enforcement, driving record, terminations and disciplinary actions at multiple jobs, and admitted use of marijuana warranted his removal from the list.

On reconsideration, the appellant states he did in fact file materials and arguments in support of his initial appeal via Fedex the confirmation of delivery to “Trenton, NJ US” on June 15, 2017. Further, the appellant provides copies of his

original submissions on reconsideration and requests that they be reviewed by the Commission and that he be restored to the list. With respect to his “admitted use of marijuana within three years” of his application, the appellant argues that the appointing authority presents this out of context. Specifically, he explains he began smoking marijuana with friends, came to realize they were “the wrong crowd,” and stopped using the drug in 2011 when he was 23 years old. The appellant states he did not use it again until 2014, when he smoked marijuana on one single occasion and realized that he needed to give it up completely. In this regard, he presents that this was a youthful mistake and that he stopped using when he became employed by New Jersey Transit, where he is randomly tested for drug use.

With respect to his employment history, the appellant explains that he “did work for very short periods of time at a number of jobs as I was trying to find my way.” He notes that 10 of the 12 jobs were in the three years from 2006 to 2009, when he was 18 to 21 years of age. Further, the appellant presents that he never “walked off” a job, but gave notice each time he quit. Additionally, in response to the claimed “walk off” of a temporary job, he states that this was due to safety concerns and he was reassigned to another position without incident. He also questions the assertion of his “excessive use of sick time” as the claimed sick days were outside of the time he was employed with Roth Staffing. The only discipline he ever received at a job was when he terminated for not wearing a proper uniform while employed by Pep Boys during high school. However, he was rehired by Pep Boys in 2012 working his way up to Store Manager.

Concerning the incidents with the Jersey City Police Department, the appellant explains that he had too much to drink at a birthday party in May 2015 and when he was brought home he started arguing with his brother that resulted in his mother calling the police. Although charged with a disorderly persons offense, it was ultimately dismissed. Regarding a second incident, the appellant states that a female co-worker at Pep Boys filed a police report claiming that he harassed her outside of her home by calling her names. In this case, the police never contacted him nor was a civil suit ever filed against him. With respect to his driving record, the appellant states that all of his moving violations occurred between 2007 and 2009 and that his two recent license suspensions were for parking violations and not making a final payment on a payment plan for parking tickets. Regarding the alleged false social media reference, the appellant states that this was an understandable typographical error on his application as he had not used the account for six years prior to listing it on his application. In support of his request, the appellant provides six letters of recommendation reference all attesting to his character.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

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:4-6.1(a)7 states that an eligible may be removed from the list who has a prior employment history which relates adversely to the title. *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.

Initially, it is unclear as to why the appellant's submissions in his initial appeal were not included in the record. However, given that he provided a Fedex confirmation of delivery of those submissions to "Trenton, NJ US," the Commission will review them on reconsideration.

Upon review of the documentation provided on reconsideration, the record demonstrates that there is ample evidence to support the removal of the appellant's name from the subject list. The record evidences that the appellant was arrested on May 25, 2015, but the charges were dismissed. 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 was 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). In this case, according to the police investigation report submitted by the appointing authority, on May 25, 2015, little more than one year prior to the issuance of the subject certification, the appellant arrived home from a party drunk, became irate, belligerent and aggressive, resulting in his mother calling the police. After the police arrived and attempted to speak to the appellant, he became extremely irate and aggressive and the officers had to restrain him and then transported to the hospital to be treated for his intoxication. He was also named as a suspect in a harassment complaint in January 2007.

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.

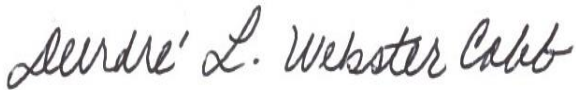
In this case, in addition to his May 2015 arrest, the appointing authority provided a copy of the appellant's certified driver abstract that indicated his license was recently suspended from November 2015 to December 2015, September 2014 to December 2014, as well as in March 2009. Clearly, these adverse incidents occurring shortly before consideration for the position, either through arrest or licensure suspension, 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. Further, the appellant's driver abstract indicated that he received three speeding tickets between June 2007 and October 2008, two violations for unsafe operation of a motor vehicle in 2008, obstructing passage of another vehicle in 2009, disregarding an officer directing traffic in 2009, as well as tickets for failure to wear a seat belt and improper display/fictitious plates. The appellant also admitted that he stopped using marijuana in 2011 when he was 23 years of age, but again used it as recently as 2014. It also cannot be ignored that the appellant listed 13 different job on his application between 2006 and 2014 and he conceded on his application that he was terminated from some of these positions. While the appellant argues that these are essentially minor issues that occurred years in the past and he has since matured, in conjunction with his recent arrest and licensure suspensions, reveal a pattern of disregard for motor vehicle laws and provides further evidence of the appellant's poor judgment. 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 his background, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M1544T), Jersey City list.

ORDER

Therefore, it is ordered that this request for reconsideration 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
27TH DAY OF MARCH, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Nolan Fdyfil
Michael L. Prigoff, Esq.
Stephanie A. Brown, Assistant Corporation Counsel
Kelly Glenn



STATE OF NEW JERSEY

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

In the Matter of Nolan Fdyfil, Fire
Fighter (M1544T), Jersey City

CSC Docket No. 2017-2485

List Removal Appeal

ISSUED: November 2, 2017 (CSM)

Nolan Fdyfil, 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.

In disposing of the August 17, 2016 certification, the appointing authority requested removal of the appellant’s name from the eligible list, contending that he had an unsatisfactory background report. Specifically, the appointing authority indicated that the appellant admitted using marijuana within three years prior to his application for the subject examination, his lengthy adverse employment history and resulting terminations, two incidents that he was involved in with the Jersey City Police Department, repeated motor vehicle violations, and a false submission made during the application process regarding his social media page.

On appeal, the appellant states that he does not have an adverse background report and indicates that he requested that the appointing authority provide him the documentation it provided to the Civil Service Commission (Commission) in support of its request to remove his name from the list.

In a response dated March 8, 2017, the appointing authority, represented by Stephanie A. Brown, Assistant Corporation Counsel, indicates that it provided the appellant’s counsel the materials it relied upon to remove the appellant’s name from the list. Specifically, it states that in May 25, 2015, the appellant was issued a summons for disorderly conduct after the police were called to his home after his mother informed them he became irate, belligerent and aggressive as a result of his

drinking at a barbeque. Further, in January 2009, a female co-worker filed a complaint against the appellant with the police after he went to the woman's home, called her to come outside, then proceeded to call her a "whore" and a "tramp" for 40 minutes. Additionally, the appointing authority provided a copy of the appellant's driver's abstract that indicated he received eight moving violations between June 2007 and December 2009 and that his driver's license had been suspended three times between 2009 and 2015. Moreover, the appointing authority indicated that between 2007 and 2015 the appellant had 13 different jobs, noting that he "simply left" several of these positions by not returning to work, being disciplined, terminated, and on one occasion walking off the job because he did not like an assignment. The appointing authority maintains that this extensive history of job abandonment, disciplinary issues, and terminations causes it serious concerns when evaluating if he would be a fit candidate for the position of Fire Fighter. Additionally, it states that the appellant responded affirmatively that he used marijuana within three years of applying for the subject title.

Although provided the opportunity, the appointing authority did not provide any additional information or argument for the Commission to review in this matter.

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. *N.J.A.C. 4A:4-6.1(a)7* states that an eligible may be removed from the list who has a prior employment history which relates adversely to the title. *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, the appointing authority properly removed the appellant's name from the subject list. Although provided the documentation by the appointing authority in support of its request to remove his name from the list and offered the opportunity to respond, the appellant has not presented any argument or information that the appointing authority's decision to remove his name from the eligible list was in error. Therefore, the appellant has not sustained his burden of proof and his appeal can be denied on that basis alone. Regardless, the record clearly reflects that the appellant's contacts with law enforcement, driving record, terminations and disciplinary actions at multiple jobs, and admitted use of marijuana, considering the nature of the position, warrant his removal from the subject list. 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, the appointing authority has presented a sufficient basis 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 1ST DAY OF NOVEMBER, 2017



Robert M. Czede, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Nolan Fdyfil
Michael L. Prigoff, Esq.
Stephanie A. Brown, Assistant Corporation Counsel
Kelly Glenn