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STATE OF NEW JERSEY

In the Matter of Vincent Trippi,
Police Officer (S9999R), Weehawken

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2394

List Removal Appeal

ISSUED: **AUG 03 2015** (SLK)

Vincent Trippi, represented by Jacqueline Ramirez, Esq., appeals the attached determination of the Division of Agency Services (Agency Services) upholding the removal of his name from the eligible list for Police Officer (S9999R), Weehawken, on the basis of an unsatisfactory criminal record.

By way of background, the appellant's name appeared on certification OL140739 that was issued to the appointing authority on June 3, 2014. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory criminal history. Specifically, it asserted that the appellant was arrested in November 2013 for Defiant Trespass. During the background investigation, the appellant indicated that his girlfriend's ex-boyfriend was harassing her and him through text messages and phone calls. Therefore, the appellant and a friend traveled to the ex-boyfriend's residence to try and resolve the matter. However, even though the appellant was not licensed nor had permission, he entered the gated community of the ex-boyfriend, approached his front door, and, after speaking with the ex-boyfriend for several minutes, a fight ensued which resulted in the appellant being stabbed in the abdomen. This incident resulted in the appellant being charged with Defiant Trespass by the police. Additionally, the background investigation revealed that, although the appellant had been licensed for only 27 months, he had received 15 motor vehicle summons. Furthermore, the investigation identified an incident when the appellant was around 16 or 17 years old where he sent inappropriate sexual text messages to a 12 year old female. However, the appellant was not charged since the juvenile's mother did not want to pursue criminal charges. Instead, the appellant received counseling twice a week for several weeks. The

appellant appealed the matter to Agency Services, which determined that the appointing authority had sustained its request to remove him from the eligible list.

On appeal, the appellant states that he was only charged with a disorderly persons offense which he maintains is not a "crime" under the New Jersey Criminal Code. Further, the appellant asserts that he does not have a criminal record as the offense was dismissed with no finding of guilt. The appellant submits documentation showing that the charges were dismissed. Additionally, the appellant represents that under *N.J.S.A. 2C:1-4*, since a conviction of a disorderly persons offense shall not give rise to any disability or legal disadvantage based on the conviction of a crime, he asserts that a mere arrest cannot be used against him. Moreover, the appellant argues that when weighing the five factors under *N.J.A.C. 4A:4-4.7(a)4* which permit the removal of an eligible candidate's name from the eligible list for a criminal record, the application of the factors to the offense charged supports a reversal of the determination. Specifically, the appellant argues that the nature of the incident was not serious as it was a dismissed trespass charge, that he was the victim and not the aggressor in the incident, that it was an isolated event as he was never arrested before or after this incident, and there is less need for him to demonstrate rehabilitation since he was not charged with or convicted of a crime.

In response, the appointing authority, represented by David F. Corrigan, Esq., presents that the dismissal of the appellant's disorderly persons charge does not, *per se*, mandate the appellant's name be restored to list. Instead, the proper inquiry is "whether the circumstance surrounding the arrest adversely relate to the position sought." The appointing authority states that the appellant was in fact a defiant trespasser as he traveled to his girlfriend's ex-boyfriend's gated community, and knowing that he was not licensed nor having permission, he approached the front door of the residence. As such, the appointing authority asserts that the appellant was the aggressor in provoking the fight and his actions show a disregard for the law. Additionally, the appointing authority argues that this was not an isolated incident as the appellant has an atrocious driving record and that he sent inappropriate sexual text messages to a 12 year old girl in violation of criminal laws. It indicates that the only reason that the appellant was not criminally charged was because the victim's mother did not want to pursue the matter. Additionally, the appointing authority presents that the appellant has not provided any evidence of rehabilitation.

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 Civil Service Commission (Commission) notes that an arrest may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. See *Tharpe v. City of Newark Police Department*, 261 N.J. Super. 401 (App. Div. 1992).

Further, 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 the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 N.J. Super. 482 (App. Div. 1970), cert. denied, 58 N.J. 436 (1971). Thus, although the appellant was not arrested for the juvenile incident, this incident was properly disclosed to the appointing authority, a municipal police department, when requested for purposes of making a hiring decision. However, N.J.S.A. 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. Accordingly, the disability arising under N.J.A.C. 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal as it is clear that the appellant was never arrested or convicted of a juvenile crime.

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 Commission to remove 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.A.C. 4A:4-4.7(a)11 provides that the name of an eligible may be removed from an eligible list for other valid reasons as determined by the Chairperson of the Commission or designee.

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 has presented a valid basis to remove the appellant's name from the subject list. When the appellant was 16 or 17 years old, he sent inappropriate text messages to a juvenile female who was 12 years old at the time of the incident. The investigation revealed that these messages were sexual in nature and prohibited by law due to the female's age. At the time of the incident, it does not appear that the appellant was arrested and criminal charges were not pursued. Instead, the appellant agreed to receive counseling twice a week for several weeks. Additionally, he has not provided any evidence to rebut the appointing authority's claim. Further, at the time of the background report, the investigation revealed that although the appellant had only been licensed for 27 months, he had received 15 motor vehicle summons including two for driving while on a cell phone, three for failure to wear a seat belt, three for fictitious license plates, three for improper lamps, as well as speeding, delaying traffic, unsafe operation of a motor vehicle, and improper operation on a highway. The appellant has not rebutted the appointing authority's contentions regarding his driving record. The appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Police Officer. These violations evidence disregard for the motor vehicle laws and the exercise of poor judgment. The appellant has offered no substantive explanation for these infractions. Thus, it is clear that the appellant's driving record shows a pattern of disregard for the law and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a position as a municipal Police Officer.

With respect to the disorderly conduct charge which was dismissed, 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 could be considered as reflecting 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). However, the Commission need not decide whether this arrest alone is sufficient for removal of his name from the eligible list. In conjunction with his arrest for defiant trespass, the totality of the appellant's background, which includes sending inappropriate sexual text messages to a 12 year old juvenile female and 15 motor vehicle summons after only having his license for 27 months, demonstrates that he lacks the character for a Police Officer position. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive

positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990).

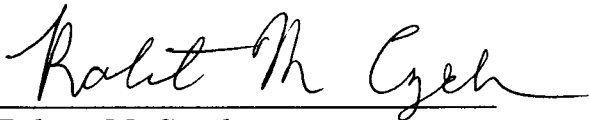
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999R), eligible list.

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 29th DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

**c: Vincent Trippi
Jacqueline Ramirez, Esq.
David F. Corrigan, Esq.
Jeff Welz
Kenneth Connolly**



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

February 3, 2015

Vincent Trippi

Title: Police Officer
Symbol: S9999R
Jurisdiction: Weehawken
Certification Number: OL140739
Certification Date: June 3, 2014

Initial Determination: Removal - Unsatisfactory criminal record

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. 4A:4-4.7(a) 4*, which permits the removal of an eligible candidate's name from the eligible list for a criminal record.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

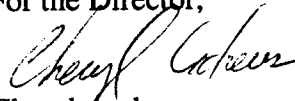
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,

For the Director,



Cheryl Andrews

Human Resource Consultant 2

c: James Marchetti