

one for improper passing, one for obstructing passage of another vehicle, and two for improper operation in highways with marked lanes. The appellant's driver's license was suspended twice from September 17, 2006 thru September 23, 2006 and February 11, 2004 to November 7, 2004. It is noted that the appellant made attempts to rectify his driving record by completing safe driving courses. Based on the foregoing, DAS found that the appointing authority had sufficiently supported and documented its decision to remove the appellant's name from the eligible list.

On appeal to the Civil Service Commission (Commission), the appellant argues that his skills and past experiences make him qualified for the position. He points to his pursuit of a Criminal Justice degree and his completion of a paralegal certification as preparation for his role as a Police Officer. Also, he states that in his current job position he understands the common sense approach to law enforcement, effectively communicating with people and aiding those in need. In support, he submits letters of recommendations from Captain Jack Robb, Lieutenant Jose Arroyo, and Paterson Mayor Jose Torres.

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, 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).

Pursuant to *N.J.S.A. 2C:36A-1*, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court

adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. *See State v. Marzolf*, 79 N.J. 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction).

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-O1T1 (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). Further, 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 record indicates that the appellant was arrested for possession of a controlled dangerous substance and entered into a Conditional Discharge in 2000 and pled guilty in 2004 to charges of possession of a controlled dangerous substance, and possession of drug paraphernalia. Clearly, the appellant's criminal record adversely relates to the position sought. Moreover, although the appellant contends that he is working towards a criminal justice degree and his "current" employment has helped him to be a good candidate for a law enforcement position, he has provided no further specifics. For example, he did not indicate the name of his current employer, his duties or how long he had been at his current job. He also did not submit a copy of his paralegal certification or a copy of his transcripts. Moreover, other than his mere statements, the appellant has not offered any substantive evidence that he has been rehabilitated and will lead a law abiding life. *Compare In the Matter of Robert Merten* (MSB, decided December 1, 2004) (Conditional discharge of a marijuana charge and two DUI convictions nine years prior did not warrant removal from Correction Officer list as appellant demonstrated evidence of significant rehabilitation via attending college, military service and gainful employment). Accordingly, under these circumstances, the

appointing authority has demonstrated sufficient reasons to remove his name from the eligible list for Police Officer (S9999R), City of Paterson.

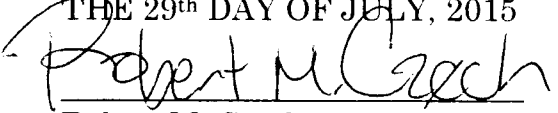
Additionally, the appellant's driving record reveals two suspensions between 2004 and 2006, and multiple motor vehicle violations from September 1998 to September 2008. The most serious violation was a conviction for driving under the influence of a controlled dangerous substance, which resulted in a six month suspension of his driver's license. 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. Rather, these violations evidence a disregard for the motor vehicle laws and the exercise of poor judgment. The appellant has offered no substantive explanation for these infractions. Such behavior is indicative of his exercise of poor judgment which is not conducive to the performance of the duties of a Police Officer. While the Commission is mindful of the appellant's recent attempts to remedy his driving record, 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. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. 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 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's criminal record and unsatisfactory driving record constitute a sufficient basis to remove his name from the eligible list for Police Officer (S9999R), City of Paterson.

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

Attachment

c: Sigfredo Mercado
Nellie Pou
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AGENCY SERVICES
P. O. Box 313
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Robert M. Czech
Chair/Chief Executive Officer

April 14, 2015

Sigfredo Mercado

Title: Police Officer
Jurisdiction: Paterson
Symbol: S9999R
Certification No: OL140541
Certification Date: 05/05/2014

Initial Determination: Removed – Unsatisfactory Background report

This is in response to your letter, received by this office on September 25, 2014, regarding your appeal which removed your name from the above eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)9, which permits the removal of an eligible candidate's name from the eligible list for "Other sufficient reasons".

In support of its decision, the Appointing Authority provided a narrative and related pages of your Background Report which includes two DUI for driving under the influence of a controlled dangerous substance; two suspensions of your license; and numerous other traffic violations.

In your letter, you indicate that you take full ownership of your past. You state that you were immature when these violations occurred. Some of the accomplishments since the time of your arrest include pursuing a degree in Criminal Justice, obtaining a Paralegal Certificate, and becoming an active member of a church.

You are to be commended on your accomplishments; however, recognizing the nature of the position at issue, a Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Police Officers hold highly visible and sensitive positions within the community and the standards for an applicant include good character and an image of utmost confidence and trust. Based on the information presented, your background shows a pattern of questionable judgment and a disregard for motor vehicle laws.

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 decision to remove your name has been sustained and the appeal is denied.

In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of 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 (C44:10-55 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
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Written Appeals Record Unit
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Trenton, NJ 08625-0312

Sincerely,
For the Director,



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