

B-1



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Josue E. Pichardo,
Police Officer (S9999R), City of
Jersey City

CSC Docket No. 2017-694

List Removal

ISSUED:

OCT 19 2017

(DASV)

Josue E. Pichardo, represented by Gerald D. Miller, Esq., appeals the removal of his name from the Police Officer (S9999R), City of Jersey City, eligible list due to an unsatisfactory background report.

By way of background, the appellant, a veteran, appeared on the Police Officer (S9999R), City of Jersey City, eligible list, which promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified on June 25, 2015. The appointing authority returned the certification, noting the appellant's appointment effective October 30, 2015. However, the appointing authority indicated that, although the appellant accepted the appointment, he was on active military duty and the investigation of his background had not been completed. See *N.J.A.C. 4A:4-4.6(a)* (Interested eligibles on military leave shall continue to be certified. The appointing authority may consider such eligibles immediately available for appointment even though reporting for work may be delayed). See also, *In the Matter of Police Officer (S9999R), Borough of Lincoln Park* (CSC, decided November 5, 2015) (Although eligible was deployed, as an interested veteran, appointment is mandated unless eligible can be removed, and if background investigation is not complete, the appointing authority may request an amendment to the certification noting removal if, upon return of eligible from military duty, the completed background investigation finds disqualifying issues). Upon the appellant's return, the investigation was completed on April 15, 2016. The appointing authority submitted an amendment to the subject certification, requesting that the appellant be removed due to an unsatisfactory background report. Specifically, the appointing authority asserted that on June 25, 2015, the

appellant was arrested and charged with domestic violence and simple assault over a dispute with his now ex-girlfriend. It is noted that the appellant turned himself into the Union City Police on June 25, 2015 when he discovered that a criminal complaint had been signed against him. As set forth in the police incident report, the ex-girlfriend stated to the police that she and the appellant had gotten into an argument and "she want[ed] to stop him from leaving the house and he turned around and struck her in the face." Although the ex-girlfriend refused medical attention, the police called emergency medical services "because she had some redness and swelling to her jaw and she stated she was having difficulty moving her jaw." Further, the ex-girlfriend went to police headquarters to file a restraining order against the appellant, but she had changed her mind and did not do so. On July 14, 2015, the charges against the appellant were dismissed.

On December 27, 2015, police were again dispatched to the ex-girlfriend's home over a verbal dispute with the appellant. According to the police incident report, the appellant believed he left his car key at the ex-girlfriend's home, but then realized that his key was "in his secondary jacket." Once he got his key, he left. The appointing authority's investigator spoke with the appellant's ex-girlfriend regarding the first incident. She indicated that she was trying to stop the appellant from leaving her apartment and she grabbed his neck, causing a scratch on his neck and his chain necklace to break. The appellant "reacted by turning around and struck her in the face." The ex-girlfriend further stated when the police arrived, her children were very upset and a complaint against the appellant was signed. The investigator noted that the appellant described the incident the same as the ex-girlfriend. The appellant was remorseful. However, given "that the candidate admitted committing an act of domestic violence assault against his ex-girlfriend in a time frame less than one year prior to the background process, and had an additional verbal dispute with her 4 months prior, he was rejected from consideration by the Police Chief and Public Safety Director."

On appeal to the Civil Service Commission (Commission), the appellant maintains that his removal was "based on a mistake of facts." He denies that he committed an assault or act of domestic violence against his ex-girlfriend and did not admit to that to the investigator. The appellant emphasizes that the charges against him were dismissed and his ex-girlfriend acknowledges that she was not assaulted. In that regard, the appellant submits a notarized statement from his ex-girlfriend, stating that the appellant "never struck me. Fact is that I did not want him to break up with me and I was preventing him from leaving my home . . . as he was trying . . . to exit my home, I then struck him on the back of his neck and pulled his rosary beads, ripping them off his neck. He then turned around and I rushed him trying to grab him. He then put both his hands up to try to stop me but I ran into his hand. He did not attack me . . . When the police showed up to my residence, my family made me file a report, when I knew it was my fault." Moreover, the appellant notes that he completed 10 years of active duty in the army

and 10 years in the National Guard, he is a good person, and he has references from two police officers, a correction officer, and three military personnel. It is noted that the investigation report indicated that all of the appellant's references gave him "high marks for loyalty, integrity and hard work." In addition, the appellant contends that he was informed by a Jersey City Police Lieutenant that he "should be good since the charges were dismissed and there was no restraining order." Additionally, he states that he has earned 94 college credits and has taken numerous courses given by the military.

In response, the appointing authority, represented by Stephanie A. Brown, Assistant Corporation Counsel, maintains that the appellant's removal should be sustained based on his June 25, 2015 arrest and the circumstances surrounding the arrest. It underscores that the appellant's ex-girlfriend told the police that the appellant struck her in the face, resulting in redness, pain, and swelling of her jaw. Additionally, the appellant stated that the incident occurred the same way as his ex-girlfriend described it. The police were again called to a verbal dispute between the appellant and his ex-girlfriend a few months later. Although the charges were dismissed in the first incident, the appointing authority maintains that the appellant's arrest adversely reflects on his character and suitability for a position as a Police Officer. In that regard, the appointing authority indicates that the appellant was 38 years old when he was arrested "for committing the serious offense of domestic violence," his arrest demonstrates "poor character judgment, aggressive tendencies, and a lack of respect for the law," and he does not meet the standard for a Police Officer.

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 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. *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 of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. See *N.J.A.C. 4A:4-4.7(a)4ii*.

Moreover, *N.J.S.A. 11A:4-10* provides that an eligible for a law enforcement, fire fighter or correction officer title may be questioned as to any arrest. 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. For example, in *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992), 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*. Additionally, *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, there is no dispute that the appellant was an adult at the time of the incident, he turned himself into the police, and was thus arrested on June 25, 2015, the same day as the incident and when he was certified from the subject eligible list. However, the charges against the appellant were dismissed. The circumstances of the arrest were explained in detail by the appellant and his ex-girlfriend by way of her notarized statement. The police report and investigation report are not inconsistent with how things escalated. The appellant struck his ex-girlfriend, but as described by the appellant and his ex-girlfriend, he did not strike her intentionally. Rather, when he turned around, the ex-girlfriend "rushed him trying to grab him. He then put both his hands up to try to stop [her] but [the ex-girlfriend] ran into his hand. He did not attack [his ex-girlfriend]." Further, while there was another incident on December 27, 2015 when the police were called, that incident did not involve an arrest or allegations of physical assault. There was a verbal dispute regarding the appellant's car key. Clearly, the appellant has shown remorse for his past indiscretions with his ex-girlfriend. Moreover, he has been a member of the military, and the record does not indicate any issues regarding his service. His references, which include public safety employees, gave the appellant "high marks for loyalty, integrity and hard work."

The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. A Police Officer holds a highly visible and sensitive position within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. The public expects applicants to present a personal background that exhibits respect for the law and rules. 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).

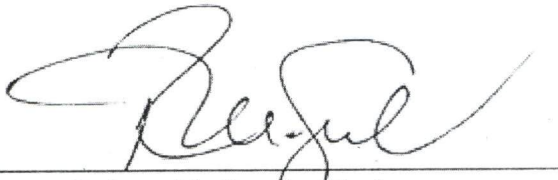
However, taking into consideration the circumstances of the appellant's arrest and the totality of the evidence in the record, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his background report. Accordingly, the appellant has met his burden of proof in this matter. Therefore, the eligible list for Police Officer (S9999R), City of Jersey City, shall be revived and the appellant's name restored to the eligible list. Furthermore, since the appellant is a veteran, he shall be given an appointment from the June 25, 2015 certification, subject to the appellant passing an updated background check and psychological and medical examinations. Additionally, upon successfully completing a working test period, the appellant shall be given a retroactive date of appointment to October 30, 2015, for salary step and seniority purposes.

ORDER

Therefore, it is ordered that this appeal be granted and the eligible list for Police Officer (S9999R), City of Jersey City, be revived and the appellant's name restored to the eligible list. Additionally, it is ordered that the June 25, 2015 certification be returned to the appointing authority for proper disposition of the appellant's name, consistent with this decision.

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 18TH DAY OF OCTOBER, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Josue E. Pichardo
Gerald D. Miller, Esq.
Stephanie A. Brown, Assistant Corporation Counsel
Robert J. Kakoleski
Kelly Glenn
Records Center