

B-11



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Kymberly Stocks,
Sheriff's Officer (S9999R), Essex
County

List Removal Appeal

CSC Docket No. 2017-143

ISSUED: **MAR 15 2017** (ABR) ✓

Kymberly Stocks, represented by Ronald J. Ricci, Esq., appeals her removal from the eligible list for Sheriff's Officer (S9999R), Essex County, on the basis of an unsatisfactory criminal record, unsatisfactory driving record and falsification of her application.

The appellant took the open competitive examination for Sheriff's Officer (S9999R), which had a closing date of September 4, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 2, 2014 and expires on May 1, 2017. The appellant's name was certified to the appointing authority on February 1, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal background, unsatisfactory driving record and falsification of her application. With regard to the appellant's criminal record, the appointing authority asserted that the appellant was charged with two disorderly persons offenses: the use of a remotely activated paging device during commission of certain crimes in violation of *N.J.S.A. 2C:33-20* in April 1998 (paging device charge); and simple assault in violation of *N.J.S.A. 2C:12-1A* in January 2009. It noted that both charges were ultimately dismissed and the simple assault charge was expunged. In requesting the appellant's removal on the basis of an unsatisfactory driving record, the appointing authority cited her driver's abstract and a report from the New Jersey Automated Traffic System, which showed five driver's license suspensions and 13 infractions in the appellant's record, including two violations for failing to possess a driver's insurance card in January 2006 and August 2007; two violations for driving while her license or registration was

suspended or revoked in January 2008 and February 2013; two violations for unsafe operation of a motor vehicle in July 2007 and January 2008; two violations for use of a hand-held wireless telephone while driving in July 2007 and November 2013; one violation for throwing objects from a motor vehicle in September 2006; one violation for speeding in July 2007; two violations for failure to observe a traffic control device in September 2008 and June 2012; and one violation for improper/fictitious plates in June 2005. The five driver's license suspensions in the appellant's record included three suspensions pursuant to the Parking Offenses Adjudication Act in June 2007, April 2008 and July 2012; and two suspensions for failing to comply with court-ordered installment payment plans in December 2007 and June 2008. The appellant's driver's abstract also indicated that her registration was suspended in January 2013 for failing to maintain proper insurance. The appointing authority also claimed that the appellant falsified her application because she only listed four of those violations in her pre-employment application, including "[t]hrew [p]aper out of window," "[t]inted [w]indows," speeding and a November 2013 violation for using her cell phone while driving.

On appeal to the Civil Service Commission (Commission), the appellant argues that her removal from the subject eligible list was improper because she does not have an unsatisfactory driving record or a criminal history and she did not intentionally falsify anything on her pre-employment application. The appellant submits copies of her driver's abstract dated June 27, 2013 and February 12, 2016. The appellant contends that her driver's abstract shows that she does not have an unsatisfactory driving record, as her driver's license suspensions were for late payments of fines and unpaid parking tickets, rather than for careless, reckless or dangerous driving. Similarly, the appellant notes that her 2013 registration suspension resulted from the lapse of her insurance, rather than from a moving violation. The appellant adds that as a Juvenile Detention Officer for the Essex County Department of Citizen Services for more than seven years, she has routinely driven County vehicles and has never been involved in an accident or cited for a moving violation. The appellant also notes that the driver's abstract provided by the appointing authority does not show violations for operating a motor vehicle while her driver's license or registration was suspended. The appellant attributes the unpaid parking tickets in her record to the fact that she regularly allowed others to use her vehicle when she lived in Newark from 2007 to 2008. She explains that she did not learn of the parking tickets issued to those other drivers until she was notified of the suspension of her license and adds that she promptly paid the fines for the outstanding tickets. The appellant indicates that her 2013 registration suspension stemmed from her failure to turn in license plates for a vehicle that was not operable and was later exchanged for a new automobile.

The appellant also argues that she did not intentionally falsify her application. She contends that, per instructions from the appointing authority's background investigator for the pre-employment application, she listed all motor

vehicle law violations she could remember and those she could verify through the driver's abstract she obtained from the Motor Vehicle Commission (MVC).

Additionally, the appellant maintains that she does not have a criminal history. The appellant explains that the underlying incident surrounding the April 1998 paging device charge involved an allegation that she had a pager in school. She indicates that the charges were dropped after the pager was found not to belong to her.¹ She states that she was not made aware that she had been charged with violating that statute until she applied for a position with the Department of Corrections in 2013. The appellant contends that the underlying event that precipitated the simple assault charge in January 2009 was a domestic violence incident where she was victimized by a former boyfriend. She notes that the simple assault charge was later dismissed and expunged.

In response, the appointing authority maintains that the appellant was properly removed from the subject eligible list because she falsified her pre-employment application by failing to disclose all of her driving infractions and license suspensions and because she possesses an unsatisfactory driving record that reflects poorly upon her ability to perform the duties required of a Sheriff's Officer.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

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.

¹ Possession of a remotely activated paging device by elementary and secondary school students without the required consent of a school board, principal or other designee is prohibited under *N.J.S.A.* 2C:33-19. However, both the appellant, in her pre-employment application, and the appointing authority, in its background investigation report, state that she was charged with violating *N.J.S.A.* 2C:33-20 (use of a remotely activated paging device during the commission of a crime or offense enumerated in Chapter 35 or 36 of Title 2C of the New Jersey Statutes).

The presentation to an appointing authority of a pardon or expungement prohibits 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 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).

Furthermore, 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). *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. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

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:4-6.3(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 this matter, a review of the record indicates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible

list based upon her unsatisfactory driving record. While the appointing authority contends that the appellant's driving record includes 13 motor vehicle violations, a review of her driver's abstract and Automated Traffic System records shows that she was found guilty of six of those infractions, including: improper display/fictitious plates in June 2005; failure to possess a driver insurance card in January 2006; unsafe operation of a motor vehicle in July 2007 and January 2008, failure to observe a traffic control device in September 2008; and using a hand-held wireless telephone while driving in November 2013. The record also indicates that the appellant's driver's license was suspended for violations of the Parking Offenses Adjudication Act in June 2007, April 2008 and July 2012; and for failing to comply with court-ordered installment payment plans in December 2007 and June 2008. The appellant maintains that her driving record does not support her removal from the subject eligible list, particularly because none of her driver's license suspensions resulted from moving violations. However, it is noted that in at least one previous decision, the Merit System Board² found that an appellant's driving record, which included multiple suspensions for violations of the Parking Offenses Adjudication Act, but no suspensions for moving violations, supported his removal from a Police Officer eligible list. *See In the Matter of Gregory Smith* (MSB, decided December 15, 2004). Furthermore, it is recognized that a Sheriff's Officer is a law enforcement employee who must enforce and promote adherence within to the law. Sheriff's 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 Sheriff's Officer is a special kind of employee. Her primary duty is to enforce and uphold the law. She carries a service revolver on her person and is constantly called upon to exercise tact, restraint and good judgment in her relationship with the public. She 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). Clearly, the appellant's history of driving infractions, including six violations and five driver's license suspensions, reflects poorly upon the appellant's ability to meet the high standards of conduct expected of a Sheriff's Officer. As such, the appointing authority's removal of the appellant's name from the subject eligible list on the basis of an unsatisfactory driving record was proper.

It is, therefore, unnecessary to determine whether appointing authority's removal of the appellant's name from the subject list was also supported on the basis of a falsified application and/or an unsatisfactory criminal record.

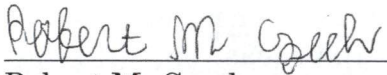
² The Merit System Board was the name of the predecessor of the current Commission.

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 9TH DAY OF MARCH, 2017



Robert M. Czech
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

c: Kymberly Stocks
 Ronald J. Ricci, Esq.
 Armando Fontoura
 Kelly Glenn
 Records Center