

B-12



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Eric McLemore,
Police Officer (S9999R), City of
Newark

List Removal Appeal

CSC Docket No. 2016-3056

ISSUED: **MAY 05 2017** (ABR)

Eric McLemore appeals the decision of the appointing authority to remove his name from the Police Officer (S9999R), City of Newark (Newark) eligible list on the basis of an unsatisfactory criminal background, falsification of his application and an unsatisfactory employment history.

The appellant took the open competitive examination for Police Officer (S9999R), Newark, 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 subject eligible list promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified to the appointing authority on August 27, 2015.

In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal background, falsification of his Background Investigation Questionnaire (Questionnaire) and an unsatisfactory employment history. With regard to the appellant's criminal background, the appointing authority asserted that the appellant was charged with making terroristic threats in violation of *N.J.S.A. 2C:12-3* in December 2008; and with aggravated assault in violation of *N.J.S.A. 2C:12-1B(4)*, unlawful purpose (firearm) in violation of *N.J.S.A. 2C:39-4A* and unlawful possession of a weapon in violation of *N.J.S.A. 2C:39-5B* in October 2009. The appointing authority indicated that the terroristic threats charge was downgraded in December 2008 to a charge of simple assault in violation of *N.J.S.A. 2C:12-01a(3)*, which was ultimately dismissed in April 2009. The appointing authority also noted the aggravated assault, unlawful purpose, and unlawful possession of a weapon charges were dismissed in

February 2010. The appointing authority also indicated that an ex-girlfriend filed a complaint with the Newark Police Department on January 20, 2011, alleging that the appellant committed harassment in violation of *N.J.S.A. 2C:33-4* by threatening to physically harm her via Facebook messages. However, there is no indication that the appellant was arrested or charged based upon that alleged incident. With regard to falsification, the appointing authority claimed that the appellant was untruthful by responding "n/a" to a question on the Questionnaire which asked if a restraining order had ever been issued against him. The appointing authority stated that its background investigation revealed that three temporary restraining orders (TROs) were filed against the appellant in January 2008, December 2008 and January 2011. The appointing authority also noted that the foregoing TROs were dismissed in January 2008, January 2009 and March 2011, respectively. The appointing authority also alleged that the appellant falsified his application by denying being "familiar with any of the following: street gangs, street gang sets, for example, bloods, crips, netas, latin kings, etc.?" In that regard, the appointing authority indicated that images of the appellant holding two pellet guns and displaying a gun with large amounts of money with two other individuals displaying what appeared to be gang signs appeared on social media. The appointing authority noted that the appellant denied having an association with gangs or gang members and it indicated that its background investigator found that the appellant was evasive in answering questions about his criminal history. Finally, with regard to his unsatisfactory employment history, the appointing authority stated that it had removed the appellant's name from a prior eligible list (S9999M) for the subject title in October 2014 on the basis of his criminal and disorderly person offense history, including domestic violence; falsifying information on his application regarding gang affiliations or associations; and an unsatisfactory driving record, including two driver's license suspensions in 2011 and 2012.

On appeal, the appellant argues that his removal from the subject eligible list was improper because none of his arrests led to convictions and any omissions from his Questionnaire were unintentional. The appellant maintains that his child's mother and her mother (his child's grandmother) brought false charges against him in 2008 and 2009 while they were in an intense battle over custody of his son. He claims that because State laws are tough on domestic violence allegations, he "was of course arrested without any evidence." In support of his claim that the December 2008 and October 2009 charges against him were false, the appellant submits a sworn, notarized statement from his child's mother. In that sworn statement, his child's mother claims that she made false statements to the Newark Police Department following the December 2008 and October 2009 incidents because she "was fueled by anger and other emotions over our never ending child support and custody war" and maintains that the appellant is "NOT at all responsible or guilty of any crime alleged." The appellant also submits copies of notices from the Essex County Superior Court which indicate that the simple assault charge from the December 2008 incident was dismissed on motion of the prosecutor on April 15,

2009 and the aggravated assault, unlawful purpose (firearm) and unlawful possession of a weapon charges from the October 2009 incident were dismissed by the Essex County Grand Jury on February 17, 2010. With respect to the falsification allegations, the appellant maintains that he was truthful in his responses on the Questionnaire and that any omissions on his part were unintentional. With regard to the restraining orders question, the appellant states that he is "now aware there were TROs or Temporary Restraining Orders against [him]," but emphasizes that the matters were one-sided hearings, where he, as the respondent, was not heard from because there was no final restraining order hearing in any matter. The appellant denies that he has any affiliation with gangs or gang members. As to his driving record, the appellant maintains that his driver's license suspension was administrative, rather than through a court order, and he claims that it was promptly restored in good standing with zero points. Finally, the appellant argues that as a life-long resident of Newark, family man and community leader dedicated to serving and helping others, he is a strong candidate for the title of Police Officer with the appointing authority. In that regard, he notes that he actively works in his community to counteract violence; hosts walks and school tours; and serves as an emergency medical technician, union president, and a community leader.

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, argues that the appellant's criminal history, falsification of his application and prior driver's license suspensions all support his removal from the subject eligible list. The appointing authority maintains that the appellant's history of arrests raises questions about his ability to perform the duties of a Police Officer. The appointing authority states that the December 2008 terroristic threat charge involved the appellant threatening to kill his child's mother, where he made 13 phone calls to her on the date in question and on one call, told his child's grandmother, that "...you ain't seen nothing yet. I'm gonna kill [my child's mother's] ass." With regard to the 2009 charges for aggravated assault, unlawful purpose (firearm) and unlawful possession of a weapon (handgun), the appointing authority maintains that his child's grandmother heard gunshots and proceeded to look out of her window, where she observed the appellant waving a gun towards her before he fled the scene. Concerning the January 2011 harassment charge, the appointing authority indicates that the appellant, via Facebook, threatened to physically assault a different ex-girlfriend, and threatened to have others harm her as well. The appointing authority submits copies of the Incident Reports its officers prepared in responding to calls associated the aforementioned incidents, as well as copies of a Complaint Inquiry and Complaint Narrative Inquiry from the New Jersey Automated Complaint System (ACS) for the October 2009 charges. The appointing authority argues that the appellant's criminal record demonstrates a pattern of serious events occurring over a short period of time, rather than an isolated incident, and reflects poorly upon his ability to perform the duties of a Police Officer.

The appointing authority also maintains that the appellant falsified portions of his Questionnaire concerning his gang affiliations, criminal history, employment history and history of restraining orders. The appointing authority submits copies of the appellant's Questionnaire and its March 2014 and September 2015 Background Investigation Reports. The appointing authority maintains that the appellant falsified two Questionnaire responses by denying being affiliated with gangs or gang members. In support, the appointing authority notes that its March 2014 background investigation of the appellant revealed several questionable pictures from social media, including one photo which depicted him holding pellet guns, a second image of him holding money on a bed, and two other photos with people who appeared to be displaying gang hand signs.¹ The appointing authority submits copies of those images. The appointing authority also contends that the appellant falsely stated that he "was never indicted" for the January 2008 or January 2009 incidents and failed to detail the underlying events on the relevant portion of the Questionnaire, as required.² The appointing authority maintains that the appellant purposefully failed to indicate the status of prior applications with it and the Essex County Department of Corrections by writing "n/a" for the status of each application.³ In that regard, the appointing authority notes that it previously removed his name from a prior eligible list (S9999M) for the subject title. The appointing authority also claims that the appellant was untruthful in writing "n/a" in response to a question concerning whether a restraining order was ever filed against him, because three prior TROs had been filed against him. The appointing authority argues that it is unlikely that the appellant would not have been aware of the TROs against him, particularly since one set of charges included weapons offenses. The appointing authority also maintains that the appellant falsely denied being charged with any disorderly persons offenses on the Questionnaire, because he had been charged with harassment in April 2009.

Lastly, the appointing authority argues that the appellant's driver's license suspensions in 2011 and 2012 render him unsuitable for the position of Police Officer because he fails to meet its standard, as stated on the Questionnaire, that a candidate "have no driver's licenses suspensions in the past two years." The appointing authority also contends that the appellant's history of driver's license suspensions is inconsistent with the duties required of a Police Officer, namely the essential function of operating a motor vehicle.

¹ The appointing authority claims that the appellant removed those images from social media after he underwent a March 2014 background investigation after his placement on a prior eligible list (S9999M) for the subject title.

² It is noted that the appellant lists the complaint number and court code for the 2008 and 2009 charges in response to a question concerning arrests, indictments or convictions for criminal law violations. However, he does not explicitly identify the numbers he wrote as the complaint number and court code and he does not otherwise state what offenses he was charged with.

³ It is noted that the appellant stated that he was previously rejected for a Police Officer position because of his criminal history in response to a different question on the Questionnaire.

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 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).

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 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.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 demonstrates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list based upon the appellant's criminal history and the falsification of his Questionnaire. At the outset, it is noted that while the 2008 and 2009 charges against the appellant were dismissed, the appointing authority may properly consider whether those arrests adversely relate to the Police Officer title in accordance with the criteria listed in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4. The record shows that the underlying incidents associated with those arrests and the January 2011 harassment complaint by a second ex-girlfriend involved domestic violence or threats of violence against multiple women. The appellant submits a sworn statement from his child's mother, who claims that she filed false charges

against him in 2008 and 2009. However, it is noted that the 2008 incident involved an allegation that his child's grandmother picked up the phone during one call and the appellant told her that "I'm gonna kill [my child's mother's] ass." Additionally, his child's grandmother was the complainant in the 2009 incident who claimed that she heard gunshots and observed the appellant pointing a gun at her. As such, the appellant's child's mother's sworn statement cannot be said to speak to his child's grandmother's allegations. Furthermore, the appellant has not addressed the January 2011 harassment complaint by a different ex-girlfriend and her claim that the appellant sent her threatening messages via Facebook. The aforementioned incidents all involve allegations that the appellant used threats or other forms of intimidation against different women. Notably, the January 2011 incident involved a different ex-girlfriend than the one associated with the 2008 and 2009 incidents. These incidents demonstrate a pattern which raises serious questions about the appellant's temperament, judgment and overall ability to perform the duties of that position. Moreover, these events were relatively recent, with the most recent incident occurring approximately two-and-one-half years before the closing date. 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 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 Office 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). Clearly, the appellant's criminal history with multiple domestic violence complaints, including two arrests, reflects poorly upon his ability to enforce and promote adherence to the law.

Additionally, the appellant's falsification of his Questionnaire by answering "n/a" in response to a question which asked if a restraining order had ever been filed against him also supports his removal from the subject eligible list. On appeal, the appellant states that he is "now aware that there were TROs" filed against him. The Commission finds it highly unlikely that the appellant was not previously aware of at least one of the TROs filed against him in January 2008, December 2008 and January 2011, as the Prevention of Domestic Violence Act provides, in relevant part, that an order granting a TRO must be immediately forwarded to the appropriate law enforcement agency for service on the defendant and must be immediately served upon the defendant by the police. See N.J.S.A. 2C:25-28(l). Accordingly, the appellant's criminal history and the falsification of his application provide sufficient bases to remove the appellant's name from the subject eligible list. It is, therefore, unnecessary to determine whether the appointing authority's

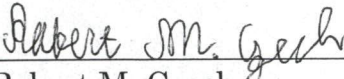
remaining allegations concerning the appellant's employment history, falsification of his application or an unsatisfactory driving record would also support his removal from the subject eligible list.

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 3RD DAY OF MAY, 2017



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