



**STATE OF NEW JERSEY**

In the Matter of Andrew Barnes,  
Police Officer (S9999U), Newark

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-3554

List Removal Appeal

**ISSUED: DECEMBER 21, 2018 (SLK)**

Andrew Barnes appeals his removal from the eligible list for Police Officer (S9999U), Newark on the basis of an unsatisfactory background<sup>1</sup>.

The appellant took the open competitive examination for Police Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory background. Specifically, it stated that as a Municipal Court Attendant for the appointing authority, the appellant received a negative reference, a major suspension<sup>2</sup>, and a minor suspension.

On appeal, the appellant highlights that he was in the Junior Reserve Officer Training Corps in high school, a Police Aide for the appointing authority's Police Department, a criminal justice major while attending Rutgers and currently is a Municipal Court Attendant. He states that as a Police Aide, he did not have any problems and many coworkers can vouch for his character. The appellant presents

<sup>1</sup> The basis for the appellant's removal is his disciplinary history and negative reference from his service as a Municipal Court Attendant, thus, an adverse employment history is a more accurate description for the basis of his removal. *See N.J.A.C. 4A:4-6.1(a)7.*

<sup>2</sup> The appointing authority's background report indicates that the appellant received a Preliminary Notice of Disciplinary Action (PNDA) for a 30-day suspension. However, there is no Final Notice of Disciplinary Action (FNDA) for a 30-day suspension in the background report, nor does the appellant's personnel records indicate that he served a 30-day suspension.

that he has never been found guilty of a crime and his driving record is in good standing, including not having received a ticket in over five years. He states that although the investigation revealed that a specific Court Director provided a negative reference, he asserts that this individual has a personal vendetta against him and did not know him. The appellant emphasizes that from 2007 until 2013 he did not have any write-ups in his personnel folder and he has not had one since May 5, 2015, which he believes proves that this individual harassed him. He claims that although he was charged with insubordination, conduct unbecoming a public employee, neglect of duty, discrimination (sexual harassment) and other sufficient cause on two separate PNDAs, he did not do anything to deserve these charges and he never had any hearings. The appellant explains that it was a joke on his Facebook page where a friend wrote, "I am drunk in DWI court" as clearly the judge would not let him work while he was drunk. He presents that he twice requested hearings concerning the charges and he filed a grievance against this Court Director, which was ignored. The appellant indicates this his manager for 11 years gave him a positive reference. He represents that he works weekends, is punctual, covers other people's shifts when needed, and works overtime almost every week. The appellant asserts that he does everything his manager asks him to do, has a good working relationship with most coworkers, and takes pride in his work. The appellant argues that this one individual who has bullied him should not be able to ruin his career or good character.

In response, the appointing authority, represented by Courtney Durham, Assistant Corporation Counsel, presents that the Court Director provided a negative reference concerning the appellant's work. Further, the investigation revealed that the appellant received a FNDA for separate incidents including the appellant making a video making defamatory remarks while in court which was posted on Instagram in violation of the court's social media policy, posting a video on Facebook stating, "How I'm in DWI Court and drunk," watching videos on his cell phone during a training class, leaving the courtroom without permission to take a cigarette break, and being verbally disruptive in a public hallway with his manager. These charges resulted in the appellant receiving a 30 day suspension.<sup>3</sup> Thereafter, the appointing authority presents that he received a second PNDA for separate incidents including stating to a female court employee, "You must not be getting any," which was believed to be a sexual reference, being insubordinate by arguing with court staff and making harassing and discriminatory remarks directly related to the assigned police officer's personal life and marriage, and repeatedly refusing to go on lunch break when directed by the assigned Deputy Court Administrator.<sup>4</sup> The appointing authority indicates that the appellant refused to sign the PNDA, which ultimately led to a five-day suspension. Additionally, the appointing authority indicates that there was another incident where he clocked out for lunch while court was still in session, left

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<sup>3</sup> While no FNDA has been presented and no evidence of this suspension appears in the appellant's official personnel record, he has not presented any argument or evidence to refute this assertion.

<sup>4</sup> With the appellant's appeal, he attached his grievance where he denied making comments that were sexual in nature to a co-worker or that he made harassing comments to the assigned police officer.

the courthouse and did not return until the end of his work shift, which led to him having to corrective conferences.

## 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 Civil Service 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.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 properly removed the appellant's name from the subject list. Specifically, the appellant received a negative reference, a minor suspension, and at least a PNDA for a major suspension while serving as a Municipal Court Attendant. While the appellant claims that he was the victim of the Court Director's personal vendetta against him, other than his mere statements, he has not provided any evidence to support his claim. Further, the appellant has not denied that he posted defamatory remarks while in court on Instagram, watched videos on his cell phone during a training class, left the courtroom without permission to take a cigarette break, and was verbally disruptive in a public hallway with his manager. Additionally, the appellant acknowledges that his Facebook page did say that he was drunk while in court. While the appellant claims that this was his friend's joke, he is responsible for the content of his Facebook page. *See In the Matter of Anthony Herrera* (CSC, decided May 23, 2018). In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law and the appellant's employment history 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. 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. 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).

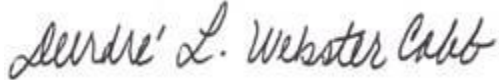
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999U), Newark eligible list.

**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 19<sup>th</sup> DAY OF DECEMBER, 2018



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