



STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE
 ACTION
 OF THE
 CIVIL SERVICE COMMISSION

Request for Reconsideration

 In the Matter of Eric Groething,
 Fire Fighter (M1544T),
 Jersey City

CSC Docket No. 2018-2442

ISSUED: JUNE 11, 2018 (WR)

Eric Groething, represented by Michael Prigoff, Esq., requests reconsideration of the final administrative determination in *In the Matter of Eric Groething* (CSC, decided November 15, 2017), which upheld the bypass of his name on the Fire Fighter (M1544T), Jersey City eligible list. A copy of that decision is attached hereto and incorporated herein.

By way of background, the appointing authority removed the petitioner from the subject eligible list on the basis of having an unsatisfactory background report. Specifically, it alleged that the petitioner was the subject of a discrimination complaint and had received a 16 hour suspension for simple assault in April 2015. On appeal to the Civil Service Commission (Commission), the petitioner complained that the appointing authority had not informed him of the reason for his removal from the subject eligible list.¹ Nevertheless, the Commission determined that although the petitioner's discrimination complaint and receipt of minor discipline within one year of his name being certified for appointment was not a sufficient basis to remove him from the subject eligible list, it was a sufficient basis to bypass him. Accordingly, the Commission restored the petitioner to the subject eligible list and ordered that his name be recorded as bypassed on the OL160983 certification.

In his request for reconsideration dated February 14, 2018, the petitioner contends that the discrimination complaint against him was dismissed on March

¹ While the petitioner complained that he was unaware of the basis for removing his name from the subject eligible list, nothing in the record indicates that he was ignorant of the discrimination complaint and criminal charge that were currently pending when he was removed.

Michael Cervino (MSB, decided June 9, 2004). *See also, In the Matter of Gary R. Kern, et al.* (MSB, decided October 11, 2000) (It was determined that appellant was not entitled to retroactive date of appointment, nor were Civil Service law or rules violated, when the appointing authority initially bypassed him due to pending disciplinary charges that were departmentally dismissed); *In the Matter of Michael Boylan* (MSB, decided October 22, 2003) (It was within the appointing authority's discretion to bypass appellant due to two discrimination complaints filed against him, which were transmitted to the OAL for a hearing and which might have resulted in disciplinary charges). Therefore, the petitioner's pending discipline and discrimination complaint was a valid reason to bypass him from the subject certification even though both charges were subsequently dismissed.

ORDER

Therefore, it is ordered that this request for reconsideration be dismissed as untimely.

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 6th DAY OF JUNE, 2018

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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and
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Attachment



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Eric Groething and
Keith O'Brien, Fire Fighter
(M1544T), Jersey City

CSC Docket Nos. 2017-2385 and
2017-2563

List Removal Appeals

ISSUED: NOVEMBER 17, 2017
(CSM)

Eric Groething, represented by Michael L. Prigoff, Esq., appeals the removal of his name from the eligible list for Fire Fighter (M1544T), Jersey City, on the basis of an unsatisfactory background report. Keith O'Brien, represented by Mr. Prigoff, appeals the removal of his name from the eligible list for Fire Fighter (M1544T), Jersey City, on the basis of an unsatisfactory criminal record. These appeals have been consolidated due to common issues presented.

In disposing of the August 17, 2016 certification (OL160983), the appointing authority requested removal of Groething's name from the eligible list, contending that he had an unsatisfactory background report. Specifically, the appointing authority indicated that Groething, in his capacity as a Police Officer with the City of Plainfield, was the subject of a discrimination complaint. It also indicated that the appellant was suspended from his position as a Police Officer on April 28, 2015 for 16 hours for simple assault. In disposing of the March 17, 2016 certification (OL160306), the appointing authority requested the removal of O'Brien's name, a veteran, contending that he had an unsatisfactory criminal record. Specifically, the appointing authority indicated that the appellant was removed from his position as a Police Officer with the Jersey City Police Department due to a positive drug test effective December 5, 2013; was arrested for possession of cocaine in June 1998; had his driver's license suspended on three occasions between 2000 and 2013, once for a DWI in 2000.

Agency Services in support of removing an eligible's name from the list when it initially disposed of the certification. However, an appointing authority's failure to provide this information to an individual who has appealed the removal of his or her name to the Commission *does not* necessarily warrant the restoration of his or her name to the eligible list. In this regard, *N.J.A.C. 4A:4-4.7(b)2* states that if an appointing authority fails to provide the eligible with copies of materials, the request *may* be denied. The Commission emphasizes that *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. Thus, it is crucial for an appointing authority to expeditiously provide the appellant the information it sent to the Commission representative in support of its request to remove his or her name from the list upon his or her request or upon the filing of an appeal to the Commission.

At this juncture, it cannot be ignored that in appeals involving the removal of an eligible's name from a list, Agency Services has already determined that there are sufficient grounds to remove the individual's name from the list since it has recorded the certification as disposed and advised the eligible of appeal rights to the Commission. *See N.J.A.C. 4A:4-4.7(c)*. Further, while there are other means by which an appellant can obtain this information in order to challenge the determination, such as through the appeal file review process offered by in *N.J.A.C. 4A:2-1.1(d)*, the intent of *N.J.A.C. 4A:4-4.7(b)1* is to ensure that the appointing authority, as the other party in these types of appeals, serve copies of all materials to every other party. In essence, this requirement echoes the obligation set forth in *N.J.A.C. 4A:4-6.3(f)* and *N.J.A.C. 4A:2-2.1(b)1*, which mandates that each party of appeal serve copies of all materials submitted on all other parties. The Commission has serious concerns in this case with respect to Jersey City's failure to provide the information after both appellants and DARA requested it to do so. Therefore, Jersey City is warned that if in the future it does not strictly comply with its obligation to provide the information required by *N.J.A.C. 4A:4-4.7(b)1* to appellants who file appeals, its failure to do so may result in the imposition of fines or other appropriate actions.

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 removal of 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.

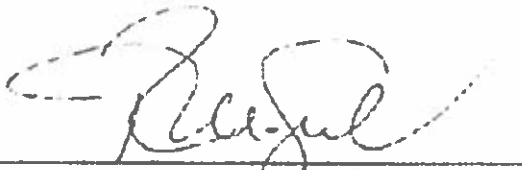
standard for an applicant includes a good character and utmost confidence and trust. Therefore, based on N.J.A.C. 4A:4-6.1(a)(5), the Commission finds a sufficient basis to remove O'Brien's name from the Fire Fighter (M1544T), Jersey City eligible list.

ORDER

Therefore, it is ordered that the appeal of Eric Groething be granted, his name be restored to the Fire Fighter (M1544T), Jersey City eligible list, but recorded on certification (OL160983) as bypassed. It is further ordered that the appeal of Keith O'Brien 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 15TH DAY OF NOVEMBER, 2017



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