



STATE OF NEW JERSEY

In the Matter of Mark Naughton,
Parole Officer Recruit (S1000U),
State Parole Board

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

CSC Docket No. 2019-2827

List Removal Appeal

ISSUED: OCTOBER 25, 2019 (SLK)

Mark Naughton appeals his removal from the eligible list for Parole Officer Recruit (S1000U), State Parole Board based on an unsatisfactory background report.

The appellant took the open competitive examination for Parole Officer Recruit (S1000U), State Parole Board, which had a June 21, 2016 closing date, 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 report. Specifically, the appointing authority indicated that the appellant was automatically disqualified based on his prior employment history, which included disciplinary actions and resignations.

On appeal, the appellant asserts that he should not be removed from the list and has continuous honorable service to the State and this country.

In response, the appointing authority submits its background report. Its investigation revealed that while the appellant was employed by the Atlantic County Sheriff's Department (Atlantic County), there was a February 1, 2011 citizen's complaint against him for use of force. While the complaint was not sustained, he received remedial training. Additionally, on August 5, 2011, the appellant was absent without leave. This led to him being suspended for one day plus an unpaid "w" day. Further, there was a complaint with the Atlantic County Prosecutor's Office for an unauthorized recording, which was determined to be unfounded. The

appointing authority indicates that the appellant did not disclose this complaint on his application. During the investigation, the appellant confirmed that he used a personal recording device to record supervisors who he felt were harassing him. Concerning the issue of him being absent without leave, the appellant claimed that it was a mix-up with his military orders.

With respect to his employment with the Camden County Police Department (Camden County), the investigation revealed that there was a June 2013 citizen's complaint against him for use of force. The matter was sustained, and he received a written reprimand. There were also several other complaints for use of force, but they were not sustained, or he was exonerated. Additionally, the investigation revealed a January 2015 complaint against the appellant for improper search, harassment, improper stop and performance issues. In February 2015, the appellant was suspended on charges including insubordination, conduct unbecoming, neglect of duty and code of ethics violations. Further, the investigation indicated that the appellant would wear a black pen recording device while on duty. The appellant advised his partner that he wore the recording device to protect himself from any complaints. He also told his partner that he previously used a recording device while employed in Atlantic County, which led to three supervisors getting "jammed up" and almost led to the appellant getting indicted for his actions. After the investigation was completed, the appellant agreed to a settlement in May 2015, where he resigned in good standing and he agreed to not seek employment with Camden County or the Camden County Police Department. Additionally, the appellant had received two notices for time and attendance issues.

In reply, in reference to Atlantic County, the appellant asserts that the investigator accepted information at face value from Atlantic County without investigating it. He indicates that while there were four charges against him, only one charge, for "other rules," was sustained. The appellant states that he did not report to a scheduled day of work because he was unaware of his required duty to report. He explains that while serving in the military, he received an order to report for military duty for an undetermined length of time. While the orders were being processed, the appellant learned that these were not continuous orders and there was one day where he was not under orders and he had to report to work. He explains that once he learned of the issue, he attempted to retroactively ask for time off. The appellant asserts that the denial of his attempt to fix the issue is evidence that Atlantic County was hostile toward him. Regardless, the appellant argues that this was the only sustained charge against him, it was done in "bad taste," and it should not be grounds for his removal from the subject list.

Regarding Camden County, the appellant highlights that the appointing authority has not submitted any documentation for him to defend against. Concerning the allegation that he received a written reprimand for "complaint of use of force," he states that he received a written reprimand for "improper use of force."

However, he cites a case that indicates that there is no such thing as “improper use of force” and the standard to be applied is the reasonableness of the level of force applied and whether such force was “excessive.” The appellant emphasizes that this was the only charge sustained by Camden County and, at that time, there was no union or grievance procedures adopted, so there was no way that he could appeal his discipline. He presents that he was never found to have used excessive force, and if he had, he would have been criminally charged.

The appellant highlights that he is currently a member of the New Jersey National Guard where he is a Technical Sergeant and the supervisor of six full-time Security Force Defenders. He indicates that he was recently appointed as the unit’s program manager for the National Criminal Information System and Criminal Justice Information System, which gives him access to highly sensitive and classified information. Additionally, as a Security Force Airman at the 177th Fighter Wing, he possesses unrestricted access to the Atlantic City Airport, which is the same access that only State law enforcement has. The appellant states that it is only because of his character, sense of duty, and law enforcement experience that he was made responsible in 2018 for a security team for the President’s individual Alert Aircraft and air crews. He presents that he was awarded an Air Force Commendation Medal for this duty. Further, the appellant emphasizes that he served two combat tours overseas and received a federal humanitarian award for actions during Super Storm Sandy. Moreover, he states that he has an honorable and perfect employment record with the Atlantic City Police Department (Atlantic City). The appellant argues that his 14 years of service to the State and the nation provide him with a background that is exemplary for the subject title.

In further response, the appointing authority submits the signed settlement agreement between the appellant and Camden County where the appellant agreed to not seek employment with Camden County or the Camden County Police Department in return for it accepting his resignation in good standing. Additionally, on the appellant’s application he admitted to “various minor discipline with Atlantic County. Minor and 1 major discipline with Camden County-suspended for violating rules regarding personal body camera-resigned prior to final disposition” and having “received negative performance notices in past LE jobs.” Further, regarding his Camden County employment, he indicated on his application, “Camden County PD: IA major discipline-suspension-for wearing a personal recording device, making fun of supervisor, not radioing a car stop at appropriate time, call out violations, shooting a dog, improper (not excessive) U of F [Use of Force].” It states that the appellant acknowledged that the major discipline was sustained, but dissolved with his resignation. Concerning his employment with Atlantic City, the appointing authority argues that this part-time position does not sufficiently mitigate against the discipline he received during full-time employment, which is a better indicator that his background is not suitable for a position in the subject title.

In further reply, the appellant asserts that the appointing authority has not presented any documents to support its position that his employment with Camden County was anything but honorable. He emphasizes that there was no adjudication regarding the charges with Camden County. The appellant claims that his agreement to not seek future employment with Camden County does not mean that he did not satisfactorily perform his duties. Similarly, the appellant argues that his resignation with Atlantic County also does not mean that his service was not honorable. He states that the only sustained charge against him in Atlantic County was an unintentional missed day of work due to the chaotic aftermath for the military after the killing of Osama Bin Laden. Additionally, the appellant presents that any alleged issues regarding his performance with Atlantic County took place while he was young and prior to his becoming a federal law enforcement officer. He states that the burden for administrative charges is much lower than criminal charges and there are no standards that prevent an appointing authority from making allegations against him. The appellant submits a psychological test for fitness given by the Air Force that he passed. Additionally, he presents his military service and his service with Atlantic City as proof this his background is suitable for a position in the subject title.

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 (Commission) to remove an eligible's name from an eligible list for having a prior employment history which relates adversely to the title.

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.

Initially, although the appointing authority argues that the appellant violated its criteria for automatic removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In this matter, the appointing authority had a valid reason for removing the appellant's name from the list. Specifically, a review of the record indicates that appellant began employment as a Sheriff's Officer in May 2009 with Atlantic County. Thereafter, in 2011, there was a citizen's complaint that led to remedial training, an absence without leave that led to a one-day suspension, and a complaint for an unauthorized recording, where the charge was dismissed, but the appellant confirmed that he used the recording device. The appellant resigned in good standing on April 7, 2013. Thereafter, the appellant began employment as a County Police

Officer for Camden County on April 8, 2013. In June 2013, there was a citizen's complaint against him regarding his use of force, which was sustained, and he received a written reprimand. Additionally, in February 2015, the appellant received various administrative charges due to his wearing a recording a device. There were also other charges that were not sustained, and he received two notices for time and attendance issues. In May 2015, the appellant agreed to not seek future employment with Camden County in return for the appointing authority accepting his resignation in good standing, effective February 28, 2015. In other words, the appellant was unable to sustain long-term employment with two separate law enforcement agencies due to multiple incidents while being employed by both agencies. In this regard, it is recognized that a Parole Officer Recruit is a law enforcement employee who must help keep order and promote adherence to the law. Parole Officers, like Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects Parole Officers to present a personal background that exhibits respect for the law and rules.

Further, while the appellant complains this his resignations do not indicate that he committed alleged offenses and that he did not have any disciplinary appeal rights while working for Camden County, the record indicates that the appellant signed a settlement agreement with Camden County. The settlement agreement indicates that he was issued a Preliminary Notice of Disciplinary Action dated February 28, 2015, which sought his removal. Further, the settlement agreement indicates that he initially requested a departmental hearing. In other words, there clearly was a disciplinary process and the appellant chose to settle the matter rather than contest the charges. Additionally, at minimum, the appellant could have contested any sustained discipline in Superior Court, but he chose otherwise. The Commission has removed candidates from eligible lists under circumstances where the candidate, in his or her prior employment, resigned while disciplinary charges were pending or resigned in good standing in lieu of discipline and had a prior disciplinary history. For example, in *In the Matter of Dennis Strasser* (MSB, decided May 28, 1992), the removal of an eligible from an open competitive list based on the eligible's employment history which showed that he had resigned while disciplinary charges imposing a removal were pending was upheld. Moreover, in *In the Matter of Darren Grossman* (MSB, decided January 17, 2001), it was found that the appellant's employment history as a Police Officer with Jackson Township (Jackson) was sufficient to remove him from the Police Officer, Township of Marlboro, eligible list since he resigned in good standing in exchange for Jackson not proceeding with disciplinary charges. Similarly, in *In the Matter of Ralph Lubin* (MSB, decided May 8, 2001), the appellant's termination was recorded as a resignation in good standing as a result of a settlement agreement, whereby the appointing authority did not recommend or institute criminal proceedings against the appellant in exchange for

the appellant resigning in good standing and withdrawing his grievance. Finally, while the Commission commends the appellant on his military service and other State and local service, as the last incident with Camden County was in February 2015, and the closing date for the subject examination was in June 21, 2016, there was insufficient time for the appellant to demonstrate this his employment history was sufficiently rehabilitated.

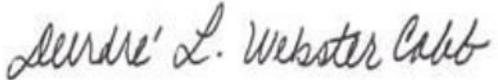
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Parole Officer Recruit (S1000U), State Parole Board eligible list.

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 23rd DAY OF OCTOBER, 2019



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