



STATE OF NEW JERSEY

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

In the Matter of Fred Emmer,
Sheriff's Officer (S9999U), Bergen
County Sheriff

List Removal Appeal

CSC Docket No. 2020-24

ISSUED: OCTOBER 25, 2019 (HS)

Fred Emmer, represented by Donald C. Barbati, Esq., appeals the removal of his name from the eligible list for Sheriff's Officer (S9999U), Bergen County Sheriff on the basis of an unsatisfactory background report.

The appellant, a veteran, took and passed the open-competitive examination for Sheriff's Officer (S9999U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 29, 2017 and expires on March 30, 2020.¹ The appellant's name was certified to the appointing authority on July 26, 2018. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background report. Specifically, the appointing authority asserted that the appellant was charged with theft in violation of *N.J.S.A. 2C:20-3a* and forgery in violation of *N.J.S.A. 2C:21-1a(2)* on September 5, 1994, to which the appellant pled guilty, and resisting arrest by eluding a police officer in violation of *N.J.S.A. 2C:29-2b* on October 4, 2001, to which the appellant pled guilty.² The October 4, 2001 incident also resulted in a violation for careless driving. During his service in the United States Navy, he received two nonjudicial punishments (NJPs). Specifically, he received an NJP for wrongful appropriation of several rifle cleaning kits and found ammunition in 1997, for which he forfeited \$300 in pay per month for two months and was restricted to his workplace, place of worship, mess hall or berthing space. He received an NJP for disobeying an order in 1999, which resulted in 45 days of half pay, 45 days of

¹ The eligible list was extended one year to March 30, 2020.

² All records concerning the foregoing charges were expunged in 2016.

extra duty and reduction in rank. Further, by order of the Superior Court of New Jersey on April 24, 2018, the appellant's application for a Firearms Purchaser Identification Card was denied pursuant to *N.J.S.A. 2C:58-3c(5)*, which provides that no such card shall be issued to any person "where the issuance would not be in the interest of the public health, safety or welfare." The appointing authority stated that this was significant because as a Sheriff's Officer, the appellant would legally be able to possess and carry his department-issued firearm both on-duty and in a concealed capacity when he had been denied the right to purchase a firearm for recreational purposes by the Superior Court order.

On appeal to the Civil Service Commission (Commission), the appellant maintains that the removal of his name from the eligible list was improper. In this regard, he argues that the incidents the appointing authority relied upon occurred over 18 years ago and thus were remote in time. The appellant contends that the October 4, 2001 incident must be considered in the proper context: the incident stemmed from his drinking with off-duty police officers after volunteering to help assist and search for survivors of the September 11th attacks. The appellant explains that the incident occurred only three weeks after his exposure to extreme trauma at Ground Zero and immediately after he met up with several officers to discuss and/or vent about their experiences at Ground Zero. In addition, the appellant argues that his personal history and evidence of rehabilitation justify the restoration of his name to the list. Specifically, during his approximately four years of military service, he received several commendations; served as a Fleet Marine Force Hospital Corpsman, a role in which he provided life support to sick and injured Marines and Sailors and trained and applied military operations in urban terrain; and served as a member of the Marine Expeditionary Unit Emergency Response Team during two deployments to the Middle East, a role in which he provided tactical medicine and support to remote operators. The appellant asserts that following his military service, he has built a distinguished career as a certified paramedic with years of multi-disciplinary experience in pre-hospital emergency care and disaster response. He also attended Rockland Community and has been married for approximately 10 years. In support, the appellant submits various commendations and certifications, letters of recommendation and other documents.³

In response, the appointing authority, represented by Daniel E. Zwillenberg, Chief Counsel, maintains that the removal of the appellant's name from the eligible list was proper. It argues that this is not a case of a single, isolated arrest but rather a case of multiple serious criminal convictions as an adult that "book-ended" documented incidents of misconduct in the military. These events along with the appellant's inability to qualify for a Firearms Purchaser Identification Card, in the appointing authority's view, demonstrate that he is unsuitable for a law enforcement position.

³ The appellant presents no specific arguments concerning the Superior Court's April 24, 2018 order, nor any documents related to his military service.

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 that includes a conviction for a crime that 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 shall prohibit 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. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought.

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. *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 name from an eligible list was in error.

A review of the record indicates that the appointing authority's request to remove the appellant's name from the subject eligible list was justified. The appellant was involved in two separate incidents as an adult that resulted in

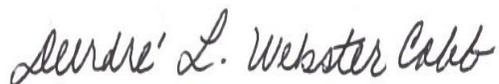
criminal convictions. He was also involved in two separate incidents during his military service that resulted in discipline for misconduct. Such actions leading to discipline, in both the military and law enforcement contexts, reflect on an individual's reliability and respect for his employer. The appellant's criminal record and military disciplinary record are indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Sheriff's Officer. Moreover, any evidence of rehabilitation presented is negated by the Superior Court's April 24, 2018 order denying the appellant's application for a Firearms Purchaser Identification Card. That order came during the life of the eligible list and a mere three months before the appellant's name was certified to the appointing authority. Since the position of Sheriff's Officer requires the ability to use firearms responsibly, it would be incongruous to restore the appellant's name to the list after the Superior Court has determined that it "would not be in the interest of the public health, safety or welfare" to issue the appellant a Firearms Purchaser Identification Card. It is recognized that a Sheriff's Officer is a law enforcement employee who must enforce and promote adherence to the law. Sheriff's Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the 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 Sheriff's Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's background provides a sufficient basis to remove his name 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 23RD DAY OF OCTOBER, 2019



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