



STATE OF NEW JERSEY

In the Matter of Michael Habbart,
Fire Fighter (M1889W), Woodbridge
Fire District #5

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

CSC Docket No. 2020-2686

List Removal Appeal

ISSUED: AUGUST 26, 2020 (SLK)

Michael Habbart appeals the decision to remove his name from the Fire Fighter (M1889W), Woodbridge Fire District #5, eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Fire Fighter (M1889W), which had an August 31, 2018 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.

On appeal, the appellant states that although the appointing authority¹ told him that he had bad references, his references advised him that they were never contacted. Further, while the appellant acknowledges the had six motor vehicle violations, he presents that his last one was on January 30, 2011, which is nine years ago. Similarly, while he acknowledges that he has been stopped several times for motor vehicle infractions, he indicates that the last stop was in March 2014, which is six years ago. Additionally, the appellant presents that in December 2011, he was deemed at fault for an accident while leaving the Avenel Fire Department after a fire call. He states that he was not asked about motor vehicle accidents on his application. The appellant acknowledges that he had a lack of judgment when he made an offensive post several years ago on Facebook about a member of the township's Community Emergency Response Team (CERT). Regarding problems with his sister, he explains that he has

¹ The background report was performed by the Woodbridge Police Department.

not spoken to her in nine years due to a disagreement about a family member. The appellant states that he was not asked about family members on his application and it is not relevant to his work life.

Concerning his employment and volunteer history, the appellant states that he has worked for the Woodbridge Township Department of Public Works since June 2012. He also indicates that he worked part-time for the Avenel Fire Department (Avenel FD) as part of its duty crew from around September 2010 to July 2017. The appellant states that the Avenel FD Operations Supervisor kept meticulous notes when he was late for crew work by only a couple of minutes. He explains that he called out of crew work due to illness, family emergencies and a flat tire and he was suspended from working the crew for a year. The appellant indicates that it was his choice to do crew work and he did it to make extra money. However, he presents that he was not sworn to do it or hired to do so as the only oath that he took at the Avenel FD was to protect life and property as a volunteer. The appellant states that he tried to explain to the Avenel FD when he was reprimanded that his family comes first and sometimes he was sick. He explained that he worked as a custodian and was subjected to illness and germs, but he was still reprimanded. Regarding the allegation that he was a bad Fire Fighter and he needed to be guided with every task, many times as a volunteer Fire Fighter, he was placed in a supervisory position where he had to guide his fellow Fire Fighters, maintain accountability and maintain a watchful eye over them in dangerous fire conditions. The appellant highlights that he was voted into a trustee position by his peers in 2016 and, in 2017, he received the Community Service Award by the Middlesex County 200 Club. Further, while working "The Work Crew," occasionally his Woodbridge Township Police Officer friends and his former fiancée would stop by to chat and have a meal/lunch break. Although he was told a few times that he could not have visitors, he explained that the firehouse was a public building and it was his understanding that anyone could enter the building within reason if he was aware of them.

Additionally, he served in the New Jersey National Guard at the Morristown Armory from March 2006 to April 2012. The appellant indicates that the appointing authority advised him that it spoke to several members of his former unit and none of them were fond of him. The appellant states that he spoke to a full-time employee at the Morristown Armory who indicated that he had no recollection of anyone calling. Further, he finds it interesting that the appointing authority could speak to someone at the Morristown Armory as he was not asked to provide a phone number.

The appellant asserts that there were several other candidates who had similar background issues as him and they were hired. Therefore, he believes that the appointing authority is hiring based on nepotism and not merit as required under Civil Service laws and rules. For example, he presents that a newly hired Fire Fighter was caught several years ago using a fake address by an investigative committee during his hiring process from a fire department outside of Woodbridge Township. The appellant also believes that there was a conflict of interest as it is his understanding that the former Avenel FD Operations Supervisor, who was newly hired as a Fire Fighter, was

the one who provided the paperwork that was used to remove his name from the list. He states that he is troubled that some of the newly hired Fire Fighters could access his fire department file when only the Fire Chief and Fire Commissioners should have access.

In response, the appointing authority, represented by Daniel Pierre, Esq., states that the investigation revealed that the appellant made several derogatory posts on his Facebook account including cursing at his sister, cursing at another who responded to his postings, and making other offensive statements about his sister and the responder. Additionally, in an unrelated incident, the appellant posted on Facebook with the sole purpose of ridiculing members of the Township's CERT Team by making offensive statements directed towards them. Additionally, the appellant failed to disclose the offensive comments on his application and has shown a lack of candor and remorse about these comments. Further, the investigation revealed that the appellant, for three years as a volunteer in the Avenel FD, failed to respond to at least 50 percent of fire calls as required. Moreover, regarding non-fire calls, he was either late or called out on 18 separate occasions, which led him to being suspended from the Work Crew for two weeks. In response, the appellant made an offensive remark about his supervisor, which led to another suspension. Additionally, his supervisor indicated that the appellant's work was only satisfactory if he "stayed on top of him" and that he "spent a lot of time talking and not working." Therefore, the appointing authority asserts that the appellant's employment history is adverse to being a Fire Fighter. Furthermore, the investigation revealed that the appellant had an extensive history of motor vehicle related violations between 2005 and 2014 and he was involved in a motor vehicle accident in 2011 where he was deemed at fault. Therefore, the appointing authority contends that his driving history is unsatisfactory. Consequently, the appointing authority argues that the totality of the appellant's background does not meet the standard for a Fire Fighter.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)7*, allows the Civil Service Commission (Commission) to remove an eligible's name from an employment list when he or she has a prior employment history which relates adversely to the title.

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 employment list for other sufficient reasons.

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, the appointing authority had valid reasons for removing the appellant's name from the list. The record indicates that the appellant made

several offensive postings on Facebook concerning his sister, another person, and regarding the Township's CERTS team. Additionally, the record indicates for three years as a volunteer Fire Fighter for the Avenel FD, the appellant failed to respond to 50 percent of the fire calls as required. Additionally, while working on the work crew for the Avenel FD, the appellant, on 18 occasions either did not show or was late. Further, in response to a suspension due to his attendance issues, he referred to his supervisory in a derogatory way, which led to a further suspension. There were also some questions about his work ethic. Therefore, the Commission finds that the totality of the appellant's background is adverse to being a Fire Fighter. In this regard, firefighters are not only entrusted with the duty to fight fire; they must also be able to work with the general public and other municipal employees, especially police officers, because the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship places at risk the citizens of the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police departments at a fire. *See Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998).

Concerning the allegation that the appellant's driving history is adverse to being a Fire Fighter, when an appellant is removed for an unsatisfactory driving record for a position as a Fire Fighter, the appellant has the burden of proof to demonstrate that a driver's license is not essential to the position. *See In the Matter of Patrick Farrell, Jr.* (CSC, decided November 21, 2018) and *In the Matter of Paul Newman* (CSC, decided November 21, 2018). While the appellant has not provided such proof, as there are sufficient reasons to remove the appellant besides his driving history, the Commission need not consider his driving record. Finally, referring to the appellant's claims that the appointing authority hired Fire Fighters based on nepotism and conflicts of interest, other than mere statements, the appellant has not provided any evidence to support these claims. Regardless, the appellant's background is clearly adverse to the position of Fire Fighter.

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 Fire Fighter (M1889W), Woodbridge Fire District #5, 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 19TH DAY OF AUGUST 2020

Deirdre' L. Webster Cobb

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