



STATE OF NEW JERSEY

In the Matter of Luis Salerna, Police Officer (S9999R), Paterson

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2591

List Removal Appeal

ISSUED: OCT 0 9 2015 (JET)

Luis Salerna, represented by David R. Bruins, Esq., appeals the attached decision of the Division of Agency Services (Agency Services), which upheld the removal of his name from the Police Officer (S9999R), Paterson, eligible list on the basis of an unsatisfactory background report.

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The appellant, a veteran, took the open competitive examination for Police Officer (S9999R), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on May 5, 2014. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory background report. Specifically, the appointing authority asserted that the appellant was arrested on February 26, 2010 in North Carolina and charged with Harassing Phone Calls in violation of N.C. Gen. Stat. 14-196(A) 3 (dismissed) and with Assault on a Female in violation of N.C. Gen. Stat. 14-33 (C) (2) (dismissed). The appellant participated in a diversionary program for 26 weeks and, as a result, he received six months of supervised probation. The appellant appealed the matter to Agency Services, which found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

¹ The charges arose from an incident of domestic violence between the appellant and his estranged wife. The charges were disposed of on November 18, 2010.

On appeal, the appellant asserts that the domestic violence incident with his now ex-wife was merely a misdemeanor summons which was dismissed following his completion of a diversionary probationary program in North Carolina.² Further, the appellant contends that the matter was an isolated incident that occurred over five years ago, and he has not been involved in any other incidents before or since that time. The appellant avers that he is an Iraq war veteran and he continues to serve in the Army Reserves. He is also employed as an EMT. The appellant adds that he has outstanding qualifications and he should be given the opportunity to serve his community. In addition, the appellant states that he has been unable to obtain information from the appointing authority pertaining to the domestic violence incident. The appellant contends that the issue may be most as it does not appear that the appointing authority is contesting the instant appeal. Moreover, the appellant maintains that his name should be restored to the eligible list since the appointing authority did not provide any substantive evidence in support of its claims. In support, the appellant provides a letter of recommendation from R. Rodriguez, a State Park Police Officer.

Despite being provided with the opportunity, the appointing authority did not provide a response.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with N.J.A.C. 4A:4-4.7(a)(4), provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See Tharpe v. City of Newark Police Department, 261 N.J. Super. 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relates to the position of Police Officer. 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.

² The appellant explains that his probation period was reduced to six months as a result of the program. He states that the matter was dismissed after he obtained a divorce in December 2010.

 $N.J.A.C.\ 4A:4-4.7(a)1$, 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 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 an appointment. Moreover, pursuant to N.J.S.A. 2C:36A-1, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. Marzolf, 79 N.J. 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, notwithstanding the arrest and diversionary program occurred in North Carolina, the appellant's arrest and Conditional Discharge could still properly be considered in removing his name from the subject eligible list.

In the instant matter, the appellant was not convicted of the charges against him and the matters were dismissed, pursuant to the appellant's successful completion of a diversionary program. Nonetheless, the appellant was arrested and the factors enumerated in N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)4 are to be considered. Further, the Commission is mindful that while the participation in an intervention program is neither a conviction nor an acquittal, it has not been construed to constitute a favorable termination. Although the appellant has provided some evidence of his rehabilitation, the charges against him are undoubtedly serious. While it is commendable that the appellant has apparently changed his behavior since his arrest in February 2010, only four years had elapsed from the time he was arrested to the time his name was certified for the subject position. Thus, given the nature of the incident and charges, not enough time has elapsed in order to declare that the appellant has sufficiently rehabilitated himself. Although the arrest appears to be an isolated incident, the appellant was an adult at the time of his arrest. In addition, the appellant does not adequately explain his involvement with the charges. In this regard, the nature of the charges clearly adversely relate to the title of Police Officer. Individuals in this title must respond to domestic violence incidents on a regular basis and must present an appropriate example. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. In this regard, it is recognized that Police Officers hold highly visible and sensitive positions and must keep order within the community. 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 (1996). See also, In re Phillips, 117 N.J. 567 (1990). The public expects Police Officers to present a personal background that exhibits respect for the law and rules. Clearly, the appellant's background is inimical to that goal.

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 7th DAY OF OCTOBER, 2015

Robert M. Czech Chairperson

Civil Service Commission

Inquiries

Henry Maurer

and

Director

Correspondence

Division of Appeals & Regulatory Affairs Civil Service Commission Written Record Appeals Unit

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c: Luis Salerna

David R. Bruins, Esq.

Nellie Pou

Kenneth Connolly



Chris Christie Governor Kim Guadagno Lt. Governor

STATE OF NEW JERSEY CIVIL SERVICE COMMISSION

AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

February 25, 2015

Robert M. Czech Chair/Chief Executive Officer

Luis D. Salerna, Jr.

Title: Police Officer
Jurisdiction: Paterson
Symbol: S9999R

Certification No: OL140541 Certification Date: 05/05/2014

Initial Determination: Removed - Unsatisfactory Background report

This is in response to your letter, received by this office on September 25, 2014, regarding your appeal which removed your name from the above eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)9, which permits the removal of an eligible candidate's name from the eligible list for "Other sufficient reasons".

In support of its decision, the Appointing Authority provided a narrative and related pages of your Background Report which includes an arrest for a domestic violence incident that occurred on February 26, 2010 in North Carolina. You were placed on probation as a result of this incident.

You have provided a statement in response to the information submitted by the Appointing Authority, and state that you believe that you should not be removed from the eligible list, especially considering your record since that incident. Nonetheless, the Appointing Authority made the determination to remove your name based on the information discovered while performing your Background Check. Additionally, you have included a printout retrieved from the website of the Office of the Attorney General (New Jersey) which lists offenses for which an individual may be automatically disqualified for employment. It is noted that this website refers to the New Jersey State Police and may be relevant only to their recruitment standards; a particular Appointing Authority may or may not utilize the same standards.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been sustained and the appeal is denied.

In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must

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submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director Division of Appeals and Regulatory Affairs Written Appeals Record Unit PO Box 312 Trenton, NJ 08625-0312

Sincerely, For the Director,

Elliott Cohen

Human Resource Consultant Local Placement Services

Nellie Pou