



STATE OF NEW JERSEY

In the Matter of Brian Perez, Police Officer (S9999R), City of Passaic

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket Nos. 2016-1441

List Removal Appeal

ISSUED: NOV 16 2016 (SLK)

Brian Perez, represented by Neal E. Brunson, Esq., appeals the attached determination of the Division of Agency Services (Agency Services) upholding the removal of his name from the eligible list for Police Officer (S9999R), City of Passaic (Passaic) on the basis of an unsatisfactory criminal record.

By way of background, the appellant appeared in the 42nd position on certification OL140924 that was issued to Passaic on July 9, 2014. The subject eligible list promulgated on May 2, 2014 and expires on May 1, 2016. In disposing of the certification, Passaic requested the removal of the appellant's name, contending that he had an unsatisfactory criminal record. In support of its request, the appointing authority provided a copy of the appellant's criminal investigation background report which indicated that he was charged in 2007 in Clifton for Theft of Moveable Property. It is noted that the Theft of Moveable Property offense was amended to Annoyance, Interference with Comfort and Well Being and was expunged in September 2015. The appellant appealed the matter of the removal of his name to Agency Services, which found that the appointing authority sustained its request.

On appeal, the appellant certifies that he advised the appointing authority on his employment application that in 2007 he was originally charged with violating N.J.S.A. 2C:20-3A, Theft by Unlawful Taking or Possession. He presents that the charge was later downgraded in court to a violation of Passaic Municipal Ordinance 331-3B, a non-criminal offense entitled "Annoyance, Interference with Comfort and

Well Being. The appellant states that during the interview process he advised the interviewer when discussing the incident that he was a passenger in a car when his friends decided to stop and remove a rear spoiler from another vehicle which would fit his friend's car. He admits that he should have intervened and stopped his friends from removing the spoiler and he takes full responsibility for his conduct. The appellant maintains that the interviewer advised him that he could proceed and take the psychological test which he asserts that he passed. He claims that he was then scheduled to take the physical examination; however, he was then advised that his application for employment was denied. The appellant attaches two letters of reference that were submitted with his order of expungement. These references vouch for the appellant's good character and state that he is a responsible father and has held steady employment.

Although provided the opportunity, the appointing authority did not submit any additional information or argument for the Commission to review.

### 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 employment list when an eligible has a criminal record which includes a conviction for a crime which 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 Civil Service Commission or designee may determine. 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:4-6.3(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 the instant matter, the record indicates that the appellant was originally arrested and charged with violating *N.J.S.A. 2C:20-3A* Theft by Unlawful Taking or Possession and plead guilty to a violation of a Passaic Municipal Ordinance 331-3B Annoyance, Interference with Comfort and Well Being. The fact that his conviction was expunged does not mean that the appointing authority cannot consider this offense in determining whether or not to remove the appellant from the subject eligible list. However, while the crime was not a trivial matter, the nature of the incident was not so serious as to automatically exclude the appellant from consideration for Police Officer as evidenced by the fact that his punishment consisted of fines and costs and not jail time. Additionally, the event occurred when the appellant was 18 years old and over six years prior to the closing date for the subject examination. Further, he has shown evidence of rehabilitation by submitting letters of reference that vouch for his good character, state that he is a supportive father, and maintain that he has had steady employment. Moreover, his conviction for the aforementioned incident was expunged.

The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. *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). However, taking into consideration that the appellant's arrest and conviction was an isolated incident that occurred in 2007, and the totality of the evidence in the record, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list. Nevertheless, the appellant's background does provide a basis for which the appointing authority can bypass him on certification OL140924 without creating a "Rule of Three" violation.

#### ORDER

Therefore, it is ordered that his appeal be granted but his name on certification OL140924 be recorded as bypassed.

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 10<sup>th</sup> DAY OF NOVEMBER, 2016

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Robert M. Czech  
Chairperson  
Civil Service Commission

**Inquiries  
and  
Correspondence**

**Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312**

**Attachment**

**c: Neal E. Brunson, Esq.  
Philip G. George, Esq.  
Alex D. Blanco, Mayor  
Kelly Glenn**



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

Robert M. Czech  
Chair/Chief Executive Officer

September 8, 2015

**Brian Perez**

**Jurisdiction: City of Passaic**  
**Title: Police Officer**  
**Symbol: S9999R**  
**Certification No: OL140924**  
**Certification Date: 07/09/14**

**Initial Determination: Removed – Unsatisfactory Criminal History Report**

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-4.7(a)4, which permits the removal of an eligible candidate's name from the eligible list if "The eligible has a criminal record which adversely relates to the employment sought". Furthermore, per 4A:4-4.7(a)4(ii), "The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine."

In support of its decision, the Appointing Authority provided a copy of the information found when conducting your Background Check, which includes an arrest for theft of movable property.

You believe that you should not be removed from the eligible list because you have never been convicted of a criminal act. Nonetheless, the Appointing Authority made the determination to remove your name based on the information discovered while performing your Background Check.

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, you may appeal to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must 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

Alex D. Blanco, Mayor  
City Of Passaic  
330 Passaic Street  
Passaic, NJ 07055