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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Joseph Kelly, County  
Correction Officer (S9999R), Essex  
County

List Removal Appeal

CSC Docket No. 2016-3225

ISSUED: **FEB 10 2017** (ABR)

Joseph Kelly, represented by Nicholas J. Palma, Esq., appeals the decision of the appointing authority to remove his name from the County Correction Officer (S9999R), Essex County eligible list on the basis of an unsatisfactory driving record.

The appellant took the open competitive examination for County Correction Officer (S9999R), Essex County, which had a closing date of September 4, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The subject eligible list promulgated on May 2, 2014 and expires on May 1, 2017. The appellant's name was certified to the appointing authority on December 1, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory driving record. The appointing authority relied upon a background investigation and the appellant's driver's abstract, which showed that the appellant's driving record included 11 violations between September 2008 and December 2015, eight points on his driver's license and five driver's license suspensions between October 2009 and July 2014. Specifically, his record evidenced one violation for failure to wear a seatbelt; two violations for speeding; one violation for non-compliance with a regular learner's permit; one violation for failure to observe a traffic control device; five violations for driving without a license, registration or insurance in his possession; and one violation for operating a motor vehicle as an unlicensed driver. The appellant's driver's abstract listed two suspensions in October 2009 and August



2013<sup>1</sup> for failing to appear in court and three suspensions for non-payment of insurance surcharges in June 2011, September 2012 and February 2014. It also indicated that the appellant failed to appear in court to address summonses for motor vehicle violations in October 2009, June 2013, August 2013 and February 2014.

On appeal to the Civil Service Commission (Commission), the appellant argues that his driving record does not support his removal from the subject eligible list. The appellant claims that the suspensions for failing to pay insurance surcharges and failing to appear in court do not support his removal because they resulted from "situational circumstances." Specifically, he contends that the suspensions occurred because notices about those items were sent to his permanent address in the Township of Nutley (Nutley), but he did not receive the notices on a timely basis because he was away from home attending St. Thomas Aquinas College in Sparkill, New York. The appellant adds that because his parents had busy work schedules, they did not frequently review correspondence sent to the appellant at the Nutley address and only sporadically advised him about mail sent there. The appellant stresses that after he learned about the suspensions, he rescheduled the hearing dates for those matters and paid all applicable fines. The appellant also claims that the underlying motor vehicle violations do not support his removal from the subject eligible list, as the appointing authority has a history of hiring Correction Officers with driving histories more egregious than the appellant's.

In response, the appointing authority reiterates that the appellant's driving record, which included eight points, five suspensions and multiple moving violations provided an appropriate basis for the removal of the appellant's name from the subject eligible list.

## 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 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. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a

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<sup>1</sup> The appellant's driver's license was suspended on August 23, 2013 after the appellant failed to appear in court following a July 11, 2013 citation for driving without a license, registration or insurance card in his possession. The suspension ended after the closing date for the subject examination on December 15, 2013. During the intervening period, the appellant was involved in an accident on August 28, 2013 and an additional suspension order was entered against him on October 23, 2013, on the basis of his operation of a motor vehicle during a suspension period.



law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

A review of the record demonstrates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list on the basis of an unsatisfactory driving record. In the instant matter, the appellant contends that the suspensions in his driving record do not support his removal from the subject eligible list because of "situational circumstances," namely his late receipt of the motor vehicle notices after they were sent to his home in Nutley while he was attending college in New York. However, the appellant does not offer any evidence to show he attempted to resolve the issue of his late receipt of such notices. Rather, the record evidences that the appellant's driver's license was suspended five times between October 2009 and February 2014, meaning that the appellant made little or no effort to remedy the aforementioned "situational circumstances" during a nearly four-and-one-half-year period. As such, even if the Commission were to accept the appellant's explanation of the "situational circumstances," the repeated suspensions of his driver's license under such circumstances still leaves questions about the appellant's judgment. Additionally, the license suspensions were relatively close in time to the September 4, 2013 closing date for the subject examination. Notably, his driver's license was suspended as of the closing date for the subject examination and was subsequently suspended in February 2014.

Furthermore, the appellant does not dispute that his driving record includes 11 violations between December 2008 and October 2015. Instead, he essentially asserts that the appointing authority's hiring practices are arbitrary and capricious because the appointing authority has a history of hiring Correction Officers with driving histories more egregious than his. However, the appellant, despite these allegations, has not provided any specific information regarding the identities or the adverse employment histories of those individuals. While the Commission has, in some cases, reviewed the background reports of other candidates hired by an appointing authority due to allegations similar to the appellant's, the Commission has limited such review to specific individuals named by the party making the allegations. See e.g., *In the Matter of Joseph Jensen* (MSB, decided May 29, 2002); *In the Matter of Scott Sista* (MSB, decided February 27, 2002); *In the Matter of Benny Cardona* (MSB, decided January 29, 2002). Accordingly, it is clear that the appellant's driving record shows a pattern of disregard for the law and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a position as a County Correction Officer. In this regard, it is recognized that a County Correction Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. County Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image



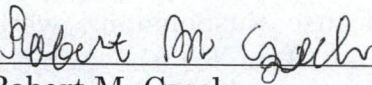
of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects County Correction Officers to present a personal background that exhibits respect for the law and rules. Therefore, the foregoing demonstrates sufficient grounds to remove the appellant's name from the subject eligible list on the basis of an unsatisfactory driving record.

### 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 8<sup>TH</sup> DAY OF FEBRUARY, 2017



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