



**STATE OF NEW JERSEY**

In the Matter of Jose Rivera, III, Fire  
Fighter (M2545T), Kearny

CSC Docket No. 2017-2085

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

List Removal Appeal

**ISSUED:** July 18, 2017 (CSM)

Jose Rivera, III, represented by Bette Grayson, Esq., appeals the removal of his name from the eligible list for Fire Fighter (M2545M), Kearny, on the basis of his failure to meet the residency requirement and an unsatisfactory background report.

The subject examination was announced with an August 31, 2015 closing date. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he did not meet the residency requirement and that he had an unsatisfactory background report. Specifically, the appointing authority provided documents indicating that his student loan bill and voter registration indicated an Irvington address and that he was found guilty of fraudulent use of a credit card in 2014 for which he received pre-trial intervention (PTI).

On appeal, the appellant states that he has not voted in an election in Irvington and the first time he actually voted was in Newark in 2016 for the Presidential election. Further, he explains that the student loan bill and statement dated March 11, 2016 was mailed to his mother's address in Irvington, as she is the individual making payments on the loan. Additionally, the appellant notes that he changed his address with the Motor Vehicle Commission to Newark in 2015, prior to the announced closing date for the subject examination. Therefore, the appellant maintains that his name should be restored to the list.

In response, the appointing authority, represented by Arthur R. Thibault, Jr., Esq., states that the appellant was charged and pled guilty to fraudulent use of a credit card in 2014 for which he received PTI. The appointing authority contends that the nature and seriousness of the credit card fraud to which the appellant was charged is self-evident and relates adversely to a sensitive public safety position. Significantly, it notes that the appellant was convicted in 2014, approximately one year prior to the closing date for the subject examination. With respect to his residency, the appointing authority presents that while some of the information from his application can be characterized as supporting his claim that he moved to Newark prior to the closing date, other, substantial documentation, such as his student loan information dated July 12, 2016 and his voter registration documentation, reflect an Irvington address. Further, a “Credit Karma” credit report submitted with the appellant’s application as of July 2016 indicated an Irvington address. Under these circumstances, the appointing authority maintains that the appellant’s name should be removed from the list.

### CONCLUSION

*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.

*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 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, firefighter or correction officer and other titles as determined by the Commission. 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).

Participation in the PTI Program is neither a conviction nor an acquittal. *See N.J.S.A. 2C:43-13(d)*. *See also Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A. 2C:43-13(d)* provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

*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 removal of 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:4-2.11(c)1* provides that when an appointing authority requires residency as of the date of the appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. *N.J.A.C. 4A:4-4.7(a)7* provides that discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residence is required is a cause for disqualification from an eligible list.

In the matter at hand, the record establishes that the appellant had significant adverse contact with law enforcement in July 2014 when he was found guilty of fraudulent use of a credit card for which he received PTI, only one year prior to the closing date for the subject examination. It is noted that the removal of eligibles from Fire Fighter lists on the basis of an adverse background have been upheld. *See In the Matter of James Alessio* (MSB, decided March 9, 1999). In that case, the eligible attempted to deceive the appointing authority in regard to his three prior arrests and the actual reason supporting his separation from the Postal Service, *i.e.*, his 1992 conviction for a federal offense which was committed during this employment. In *Alessio, supra*, it was concluded that such disregard is unacceptable in a Fire Fighter who operates in the context of a paramilitary organization in which the ability to follow orders is crucial to saving lives. *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998) was relied upon in that matter, in which the Supreme Court stated:

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.

Although the appointing authority indicated its concerns about the appellant's 2014 conviction in its response, the appellant has not provided any explanation regarding the circumstances of this matter. As noted above, it cannot be ignored that his arrest occurred in 2014, one year prior to the closing date of the subject examination and he indicated on his application that his PTI program ended in September 2015. In this case, the appellant's recent adverse contact with law enforcement is relevant to the position sought, as such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Fire Fighter. As noted above, the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. Further, there is conflicting documentation in the record with respect to the appellant's residency. Accordingly, given the totality of the circumstances, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M1545T), Kearny eligible list and the appellant has failed to meet his burden of proof in this matter

### **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 13<sup>TH</sup> DAY OF JULY, 2017



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