



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of April Scott, Police
Officer (S9999R), City of East Orange
and Police Officer (S9999R),
Township of Bloomfield

Requests for Reconsideration

CSC Docket Nos. 2018-3672 and
2018-3673

ISSUED: JANUARY 18, 2019 (ABR)

April Scott requests reconsideration of the attached final decision, rendered on April 4, 2018, which upheld her removal from the eligible lists for Police Officer (S9999R), City of East Orange (East Orange) and Police Officer (S9999R), Bloomfield Township (Bloomfield), on the basis of an unsatisfactory criminal background.

By way of background, the petitioner's name was certified to East Orange on February 2, 2016 (OL160095) and to Bloomfield on April 27, 2016 (OL160513). In disposing of the February 2, 2016 certification, East Orange requested the removal of the petitioner's name due to an unsatisfactory criminal background, unsatisfactory driving record, and a negative credit history. Specifically, East Orange submitted a background report detailing November 19, 2003 and May 8, 2006 arrests; three Temporary Restraining Orders (TROs) filed against the petitioner in 2011; responses to calls at the petitioner's residence by the Bloomfield Police Department; her financial history; and her involvement in seven motor vehicle accidents. In disposing of the April 27, 2016 certification, Bloomfield requested the petitioner's removal on the basis of an unsatisfactory criminal record. In support, Bloomfield submitted a New Jersey State Police Fingerprint Identification System Automated Applicant Record dated August 19, 2015, which detailed the petitioner's November 19, 2003 arrest.

With regard to the petitioner's criminal background, both East Orange and Bloomfield asserted that the petitioner was arrested at age 22 on November 19, 2003 and charged with two offenses under the New Jersey Code of Criminal Justice,

which were diverted through the Pre-Trial Intervention (PTI) Program in July 2004. The charges from that incident were ultimately dismissed on August 12, 2005 and the records from that arrest were expunged in March 2009. East Orange also indicated that in May 2006, the petitioner, then aged 25, was charged with simple assault, in violation of *N.J.S.A. 2C:12-1A* and endangering the welfare of children, in violation of *N.J.S.A. 2C:24-4A*. East Orange submitted that on July 9, 2007, the petitioner pled guilty to the simple assault charge and was sentenced to time served and assessed a \$45.00 fine. In its previous decision, the Civil Service Commission (Commission) found that the totality of the circumstances, including the petitioner's background and driving record, supported her removal from the subject eligible lists.

In her request for reconsideration, the petitioner argues that when the Commission rendered its April 4, 2018 decision, it failed to recognize that East Orange and Bloomfield failed to comply with Civil Service law and rules and that each appointing authority presented inaccurate information about her background and driving records. At the outset, she argues that the Commission overlooked Bloomfield's failure to submit proper supporting documentation when disposing of the April 27, 2016 certification and East Orange's failure to provide her with the documentation it relied upon to support its list removal request until March 15, 2017. She contends that these issues should have led the Commission to restore her name to the subject eligible list or record her name as bypassed on the certifications, rather than removed.

With regard to her background, she contends that both appointing authorities failed to properly consider the circumstances surrounding her arrests when requesting her removal from the subject eligible list, as required under Civil Service law, rules and case law. She maintains that the statement in the Certification Disposition Notice from the February 2, 2016 certification that her name was removed from the list by East Orange "due to a record of arrests and/or *convictions* which relates adversely to this position" (emphasis added) evidences this issue, as it is "not a factual statement," because she only has a single conviction for a disorderly persons offense. In addition, she argues that the Commission should not have treated her 2003 and 2006 arrests as part of a pattern. Rather, she maintains that because the 2003 charges were dismissed and expunged, her 2006 simple assault conviction should be considered an isolated incident. Further, she provides an explanation for her 2006 guilty plea which is identical to the statement she submitted to the Commission prior to its April 4, 2018 decision.

In addition, she contends that East Orange presented misleading information about five police reports and about three TROs.¹ Specifically, she submits that the

¹ The petitioner also complains that the Commission failed to acknowledge the dismissal of these three TROs in its initial decision. However, the Commission notes that in its April 4, 2018 decision,

five police reports that East Orange utilized did not involve matters where she was accused of wrongdoing. Rather, they included calls for medical assistance for her children and a call complaining about her neighbors. She also noted it included mention of a report in which she was identified as a witness to a dispute and a harassment complaint she filed against her landlord. As to the TROs, she emphasizes that no final restraining orders (FRO) were issued against her. Moreover, with regard to the FRO she had against her children's father, she argues that Bloomfield failed to indicate how it warranted her removal from the subject eligible list.

She also complains that the Commission failed to acknowledge misleading statements in East Orange's responses to her appeal, including claims that she pled guilty to child endangerment, had interactions with police in multiple disputes, and that the Department of Children and Families, Division of Child Protection and Permanency came to her home because of contact from the East Orange Police Department. Additionally, she maintains that Bloomfield's statement in its background report that she was convicted of aggravated assault and endangering the welfare of a child in 2003 was erroneous. She also argues that the criminal history report that Bloomfield submitted was misleading because it contained information about three other people with criminal records. She further contends that both Bloomfield and East Orange failed to acknowledge the expungement of her 2003 arrest and the return of her children to her custody as evidence of her rehabilitation. Moreover, the petitioner cites, in part, the Commission's decision in *In the Matter of Keith Hernandez* (CSC, decided March 9, 2017), to argue that the 11 years since her last conviction and the 12 years since her last arrest were so remote in time as to warrant her restoration to the subject eligible list.

Additionally, the petitioner contends that her driving record did not provide an adequate basis to remove her name from the subject eligible list, particularly as the subject Certification Disposition Notices did not indicate that it was a basis for her removal and neither East Orange nor Bloomfield mentioned her driving record in their initial responses to her appeals. She also asserts that neither East Orange nor Bloomfield provided supporting documentation for each "non-certified" driver's abstract and that there are "questionable items" on those driver's abstracts. She contends that East Orange failed to detail how her "extensive vehicular accident history" supported her removal, as it did not provide detailed information about any accident or explain why it supported her removal, as she did not receive any moving violations from these accidents. She notes that the two accident reports she furnished to the Commission indicated that the other drivers fled the scene and she was not cited for any moving violations. Further, she maintains that East Orange's use of her accident history to remove her name from the subject eligible list without providing accident reports is "prejudicial." She alleges that Bloomfield failed to

the Commission stated that the petitioner's "record includes three TROs filed against her by her children's former babysitter in 2011, *which were eventually dismissed*" (emphasis added).

submit all required documentation regarding her driving record when it disposed of the subject certification and that it is only relying upon her driving record as a basis to support her removal from the subject eligible list in “retaliation” for her pointing out the above-noted errors in its background report. She also contends that Bloomfield erroneously indicated in its background report that she received summonses for careless driving in 2007 and for failure to obey traffic control signals in 2008 and that the notation about her involvement in five accidents in 2005 is misleading, as she was not at fault for these accidents and she did not receive a summons for any of them.

The petitioner also argues that a comparison of her background and driving records to other public employees demonstrates that Bloomfield and East Orange are “prejudice[d]” and accord “preferential treatment” in their decision making² and unfairly removed her name from the eligible list. In this regard, she submits that Bloomfield continued to employ a Police Officer after it settled a civil lawsuit in which it was alleged that the Police Officer assaulted an individual during a 2013 traffic stop and she cites the Commission’s decision *In the Matter of Tameika Dwyer*, (CSC, decided February 4, 2015) as proof that East Orange has allowed Police Officers to continue to work even after a driver’s license suspension. Further, she asserts that both East Orange and Bloomfield continued to employ a municipal court judge after a 2016 arrest for driving while intoxicated and a 2018 judicial conduct complaint.³

Further, she takes issue with the Commission noting in its initial decision that she was bypassed on the July 24, 2015 certification (OL150912) from the Police Officer (S9999R), Bloomfield eligible list because she maintains that she was not “properly notified” that she was bypassed when Bloomfield disposed of that certification and “wasn’t given the chance” to appeal that action.⁴ The petitioner

² The petitioner does not elaborate as to how Bloomfield and East Orange are prejudiced or to whom they accord preferential treatment.

³ The petitioner also argues that her removal from the subject eligible lists was not warranted because the City of Newark continued to employ a Police Officer who was subject to three arrests and two TROs within a two-year timeframe. However, because such a comparison does not demonstrate any impropriety in East Orange or Bloomfield’s hiring practices, this argument will not be addressed further.

⁴ Concerning Bloomfield’s bypass of the petitioner when disposing of the July 24, 2015 certification, the Commission notes that the bypass is considered a separate matter and the petitioner would have been required to file an appeal within 20 days of when she was notified of her bypass. See *N.J.A.C. 4A:2-1.1*. Although the petitioner does not specify when she learned of her bypass, it is noted that in her submission to the Commission dated July 21, 2017, she argued that that Bloomfield’s decision not to remove her when disposing of the July 24, 2015 certification showed that the subsequent removal of her name from the subject eligible list with the disposition of the April 27, 2016 certification was unwarranted. Further, it is noted that she did not contest her bypass in the foregoing submission. Accordingly, because there is no record of the petitioner appealing her bypass after she learned of that action, her arguments concerning this bypass are untimely.

also argues that the Commission should not have considered her employment record because neither East Orange nor Bloomfield cited her employment record as a basis for removing her from the subject eligible list. Furthermore, she contests that the Commission's characterization of her employment record as "mixed" because she argues that she would not have been hired as Family Service Worker if that had been true.

Despite an opportunity to do so, neither Bloomfield nor East Orange submitted any arguments or documentation in response to the instant request for reconsideration.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

The instant request for reconsideration is based on the assertion that a clear material error has occurred which would change the outcome of the case. However, a review of the record in this matter reveals that reconsideration is not justified. Initially, the petitioner has not demonstrated that Bloomfield's and East Orange's handling of supporting documentation supports reconsideration in this matter. Initially, it is noted that Civil Service rules provide that list removal request "*may be denied*" if an appointing authority fails to provide an eligible or a Commission representative with copies of all documents and arguments it used as the basis for its request. *N.J.A.C. 4A:4-4.7(b)* (emphasis added). As such, the Commission has the discretion to determine whether any failure to comply with this requirement merits the denial of an appointing authority's list removal request. Here, the petitioner had an adequate opportunity to address the arguments and documentation Bloomfield submitted in response to her appeal, including a letter from its background investigator detailing the reasons for its list removal request, a criminal history record and a certified driver's abstract. Further, the petitioner has failed to indicate how any delay in East Orange's responses to her appeal unfairly prejudiced her, as she was provided the documentation and given an opportunity to respond prior to the Commission rendering its decision on her appeal. Accordingly, the petitioner has failed to meet her burden of proof with respect to these issues.

Further, the petitioner has failed to demonstrate that a material error occurred with the Commission's consideration of her background and driving records. At the outset, the above-noted language in the Certification Disposition Notice did not impact the Commission's independent review of the petitioner's record and it notes that for reasons of economy and efficiency, the same language is

used on Certification Disposition Notices issued to eligibles who are removed for an unsatisfactory criminal record, regardless of whether the eligible has one or more arrests and/or one or more convictions. As such, the language in the Certification Disposition Notice does not provide a basis for the Commission to reconsider its prior decision in this matter. With regard to her overall background, it is undisputed that the petitioner's background includes a 2006 simple assault conviction after an expunged 2003 arrest involving similar charges, three TROs which were filed against her and nine driving infractions, including one after the closing date. Concerning the finding that she possessed an unsatisfactory background, even with the expungement of her 2003 arrest, the parallel between those underlying charges and her 2006 conviction supports the Commission's conclusion that her 2006 conviction was part of a pattern of arrests, rather than an isolated incident. Although the petitioner maintains that Bloomfield and East Orange presented errors in their supporting documentation, she has failed to demonstrate that the Commission relied upon any such inaccuracy in its prior decision in this matter. Regarding her arguments about East Orange's consideration of an FRO against the father of her children and her involvement in five traffic accidents, the Commission notes that it did not cite these items as evidence that supported her removal from the subject eligible lists and the petitioner's pattern of arrests distinguishes this matter from *Hernandez, supra.*, as Hernandez's expunged arrest was the only arrest in his record.

Further, the Commission emphasizes that it was appropriate for it to consider the petitioner's employment record in its April 4, 2018 decision. Although neither East Orange nor Bloomfield cited it as a basis to remove her from the subject eligible list, because the petitioner made the argument on appeal that her employment as a Juvenile Detention Officer at the Essex County Juvenile Detention Center from June 2010 to May 2011 demonstrated her suitability to serve as a Police Officer, it was necessary to address her contention. It is clear that as a party in *In the Matter of April Scott* (CSC, decided April 18, 2012), the petitioner was aware that she resigned in good standing from her position of Juvenile Detention Officer, effective May 12, 2011, **in lieu of removal**. Further, the Commission's decision was a matter of public record. As such, it was reasonable for the Commission to consider her employment record, even though East Orange and Bloomfield did not assert it as a basis for her removal. Moreover, her rationale for disputing the Commission's characterization of her public employment record as "mixed" is unavailing. Even though she may have received an appointment to the title of Family Service Worker after resigning in good standing, in lieu of removal, from her position as a Juvenile Detention Officer, a resignation under such circumstances is clearly a blemish on her public employment record, which supports the characterization that it is a "mixed record."

As to the petitioner's driving record, it is noted that although she questions items on the "non-certified" driver's abstracts that each appointing authority

submitted, in reality, both furnished *certified* driver's abstracts and these documents are sufficient proof of her driving record. Although the petitioner claims that there are "questionable" items listed in each driver's abstract, the only specific items she disputes are Bloomfield's reference to a 2007 careless driving violation and a January 2009 citation for failure to obey a traffic control signal. The Commission observes that the above-noted dates appear to correspond to the posting dates for November 2006 careless driving infraction and a September 2008 citation for failing to obey a traffic control signal, respectively. The Commission emphasizes that the petitioner has the burden of proof in challenging her list removal appeals and here, she has failed to submit evidence that her certified driver's abstract contains any errors. Accordingly, there is no basis for the Commission to reconsider its findings concerning her driving record.

While the petitioner cites East Orange and Bloomfield's handling of incidents involving several employees to argue that her background and driving record did not warrant her removal, the Commission finds that these arguments do not sustain her burden of proof in this matter. The Commission recognizes that an appointing authority may pursue disciplinary charges against a Civil Service employee who is charged with a crime or has his or her driving privileges suspended. However, because the evaluation of an eligible for appointment to a Civil Service title involves different considerations than disciplinary actions, East Orange and Bloomfield's disciplinary practices cannot be used demonstrate that their hiring practices are arbitrary or capricious. Accordingly, the petitioner has not met the standard for reconsideration.

ORDER

Therefore, it is ordered that this request for reconsideration 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 16TH DAY OF JANUARY, 2019



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Attachment

c: April Scott
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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of April Scott, Police
Officer (S9999R), City of East Orange
and Police Officer (S9999R),
Township of Bloomfield

List Removal Appeals

CSC Docket Nos. 2017-1134 and
2017-3109

ISSUED: APRIL 10, 2018

(ABR)

April Scott appeals her removal from the eligible list for Police Officer (S9999R), City of East Orange (East Orange), on the basis of an unsatisfactory criminal background. The appellant also appeals her removal from the eligible list for Police Officer (S9999R), Bloomfield Township (Bloomfield), on the basis of an unsatisfactory criminal background. These appeals have been consolidated herein, as they address common issues.

The appellant, a non-veteran, applied for and passed the open competitive examination for Police Officer (S9999R), which had a closing date of September 4, 2013. The subject eligible list promulgated on May 2, 2014 and expired on March 22, 2017.

The appellant's name was certified to East Orange on February 2, 2016 (OL160095) and to Bloomfield on April 27, 2016 (OL160513). In disposing of the February 2, 2016 certification (OL160095), East Orange requested the removal of the appellant's name due to an unsatisfactory criminal background, unsatisfactory driving record, and a negative credit history. In support, East Orange submitted a background report detailing November 19, 2003 and May 8, 2006 arrests; three Temporary Restraining Orders (TROs) filed against the appellant in 2011; responses to calls at the appellant's residence by the Bloomfield Police Department; her financial history; and her involvement in seven motor vehicle accidents. In disposing of the April 27, 2016 certification (OL160513), Bloomfield requested the appellant's removal on the basis of an unsatisfactory criminal record. In support, Bloomfield submitted a New Jersey State Police (State Police) Fingerprint

Identification System Automated Applicant Record dated August 19, 2015, which only detailed the appellant's November 19, 2003 arrest.

With regard to the appellant's criminal background, both East Orange and Bloomfield asserted that the appellant was arrested at age 22 on November 19, 2003 and charged with two offenses under the New Jersey Code of Criminal Justice, which were diverted through the Pre-Trial Intervention (PTI) Program in July 2004. The charges from that incident were ultimately dismissed on August 12, 2005 and the records from that arrest were expunged in March 2009.¹ East Orange also indicated that in May 2006, the appellant, then aged 25, was charged with simple assault, in violation of *N.J.S.A. 2C:12-1A* and endangering the welfare of children, in violation of *N.J.S.A. 2C:24-4A*. East Orange submitted that on July 9, 2007, the appellant pled guilty to the simple assault charge and was sentenced to time served and assessed a \$45.00 fine.

On appeal to the Civil Service Commission (Commission), the appellant acknowledges that she was criminally charged following a November 2003 incident, but she contends that she should be restored to the subject eligible list, as the only conviction in her record is the January 2006 simple assault charge, a disorderly persons offense, and because she has significantly rehabilitated herself since the time of her 2007 conviction for that offense. The appellant argues that a proper review of the circumstances surrounding the underlying May 2006 offense "could have changed the outcome." In the instant matter, the appellant does not describe the nature of the November 2003 or May 2006 incidents because of a stated desire to avoid making details about her children's involvement in those incidents public. However, she maintains that she pled guilty to simple assault in 2007 in order to get her children back from the Department of Children and Families (DCF) after it informed her that in March 2007 there had been an incident in the resource home where one of her children was residing. The appellant submits a letter from DCF, dated April 25, 2007, regarding the investigation of that incident. Moreover, the appellant argues that there is significant evidence of her rehabilitation since the May 2006 incident. Specifically, she cites her attainment of a Bachelor's degree from New Jersey City University in 2009 and completion of a number of programs, including anger management, individual therapy, and parenting courses, as evidence of her rehabilitation. Furthermore, she contends that her employment as a Juvenile Detention Officer at the Essex County Juvenile Detention Center from June 2010 to May 2011² demonstrates her suitability for the subject title, given that the "facility employed [her] knowing [her] full background history." Moreover, she

¹ On appeal, the appellant submits a copy of an Order of Expungement issued by the Monmouth County Superior Court dated March 20, 2009, which ordered the expungement of the records connected to her November 19, 2003 arrest.

² In *In the Matter of April Scott* (CSC, decided April 18, 2012), the Commission approved a settlement wherein the appellant resigned in good standing from her position of Juvenile Detention Officer, effective May 12, 2011, in lieu of removal.

submits that she has served as a Family Service Worker with the Essex County Department of Citizen Services since November 2012 without any disciplinary issues.

In response, East Orange, represented by Michael D'Aquanni, Esq., and Bloomfield contend that the appellant's criminal background supports the removal of the appellant's name from the subject eligible list. Specifically, East Orange notes that the appellant acknowledged in her preemployment application that she had been arrested, convicted of a crime, placed on probation, fined, had to post bail, had been the subject of a criminal complaint, and was investigated for child abuse or neglect. It stresses that municipal Police Officers are held to a higher standard of conduct than ordinary employees and it maintains that the appellant does not meet those standards. East Orange and Bloomfield argue that the appellant's criminal history includes a 2003 arrest which culminated in "convictions" for two criminal offenses and a 2006 arrest that resulted in "convictions" for endangering the welfare of a child and simple assault. Bloomfield maintains that it considered the expungement of her 2003 arrest when considering her for appointment, but nevertheless determined that she was not a good candidate for the Police Officer position she sought. In support, East Orange submits copies of a State Police Fingerprint Identification System Automated Applicant Record detailing the appellant's arrest history; a Computerized Criminal History (CCH) record from the State Police dated August 11, 2008 which details the appellant's arrest history; a July 9, 2007 Judgment of Conviction from the Monmouth County Superior Court for the May 2006 simple assault charge; and a July 9, 2007 Order of Dismissal for the May 2006 charge of endangering the welfare of children.

In reply, the appellant argues that East Orange and Bloomfield mischaracterize her criminal record. In this regard, she maintains that her only conviction was for simple assault based upon the above-noted May 2006 incident. She asserts that the November 2003 charges were dismissed following her completion of PTI and were subsequently expunged. She also argues that East Orange and Bloomfield failed to adequately consider the circumstances of the underlying arrest behind the 2003 charges. Moreover, she contends that East Orange's and Bloomfield's factual errors regarding her criminal history supports her restoration to the subject eligible list. She contends that an appropriate consideration of her criminal history pursuant to *N.J.A.C. 4A:4-4.7* would not support her removal on that basis, as the nature of the underlying incidents were isolated events that were not serious, her age of 22 at the time of the 2003 incident and 25 at the time of the 2006 incident, the 11 years that have elapsed since the most recent charges and the evidence of her rehabilitation since the last incident all support her restoration to the subject eligible list. The appellant submits that the significant evidence of her rehabilitation includes her completion of a Bachelor's degree, trade school program, parenting programs, domestic violence victim counseling, and anger management program, as well as her employment in the

titles of Juvenile Detention Officer and Family Service Worker with Essex County. As to her removal by Bloomfield, the appellant argues that Bloomfield's submissions in this matter demonstrate the flaws in its background report, particularly its statement that she was "convicted" of the charges stemming from the November 2003 incident. In that regard, she notes that she was not convicted following that incident. Rather, her participation in PTI led to the dismissal of the underlying charges in July 2004.

In response to the instant appeal, both East Orange and Bloomfield argue that the appellant's removal from the subject eligible list is also warranted based upon her driving record. In that regard, both East Orange and Bloomfield cite her Driver's Abstract, which shows that she was involved in seven motor vehicle accidents between 2004 and 2014. They contend that such a history falls short of the conduct expected of a municipal Police Officer. Bloomfield also argues that the appellant's pattern of summonses for driving violations supports her removal from the subject eligible lists. Specifically, it notes that the appellant was issued summonses for unsafe operation of a motor vehicle in 2000, 2002 and 2007; careless driving in 2006 and 2007; speeding in 2004; driving while on her cell phone in 2009; and failing to obey traffic control devices in 2009 and 2014.

East Orange also argues that the appellant has an unsatisfactory background which supports her removal from the subject eligible list. In that regard, East Orange presents that the appellant was the defendant in requests for TROs issued against her by the Superior Court, Chancery Division, Family Part, Essex County in February 2011, March 2011 and April 2011. Additionally, it notes that the Bloomfield Police Department responded to multiple landlord-tenant disputes involving the appellant, as well as disputes with her children's babysitter. It submits copies of various incident reports from nine police calls to the appellant's residence between April 2011 and March 2016. Finally, East Orange argues that the appellant's 2006 bankruptcy and her outstanding debt as of June 2016 support its request to remove her from the subject eligible list. It submits an October 13, 2006 Order from the United States Bankruptcy Court, District of New Jersey, which discharged a portion of the appellant's debts pursuant to Chapter 7 of the United States Bankruptcy Code.

Concerning her driving record, the appellant emphasizes that she was not cited following any of the accidents noted in her Driver's Abstract. In support, she submits copies of accident reports dated March 21, 2005, July 27, 2010 and February 14, 2014. The March 2005 accident report states that she was in the process of making a right turn when she was involved in a collision with another vehicle. The July 2010 accident report indicates that she hit a bicyclist who failed to stop at a stop sign at an intersection. The accident report states that the bicyclist fled the scene after being hit. The February 2014 accident report indicates that the appellant was sideswiped by another vehicle and the other driver fled the accident

scene. She argues that Bloomfield has not provided adequate documentation to support her removal from the subject eligible list based upon her driving record, particularly since it did not remove her on that basis when disposing of the July 12, 2015 certification (OL150912).³

The appellant contends that East Orange's observation that she was a defendant on three TROs is misleading, as all three TROs were dismissed and had come from the same accuser, a woman that she had previously employed to babysit her children. Moreover, she maintains that East Orange failed to acknowledge that she was a victim of domestic violence and had secured a Final Restraining Order against the father of her children on January 19, 2006. She also contends that there is documented evidence of individuals systematically using the courts to file false restraining orders. In support, she submits an article from that describes a former Newark police officer's alleged use of restraining orders against former girlfriends as a means of retaliating against them. The appellant argues that East Orange cannot rely on the police calls to her residence as evidence of her unsatisfactory background, as the Investigation Reports of these incidents demonstrate that she was only involved as a complainant or a witness, and not as a suspect accused of wrongdoing.

The appellant counters that her credit history does not support her removal from the subject eligible list. She argues that her 2006 bankruptcy is too remote in time to be considered relevant, as 10 years elapsed between that event and the subject certification to East Orange and that bankruptcy no longer appears in her credit report. Moreover, the appellant submits that the majority of her debt amount is attributable to her student loans. As such, it should not preclude her employment. The appellant submits a copy of TransUnion credit report dated September 5, 2017 in support of her contentions regarding her financial history.

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 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.

³ In disposing of the July 12, 2015 certification, Bloomfield bypassed the appellant, who was listed in the 33rd position. The appellant did not appeal her bypass on that certification.

The presentation to an appointing authority of a pardon or expungement prohibits 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 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). The Appellate Division has held that when candidates for law enforcement titles, including the title of Police Officer, present an expungement, the foundation for that expungement is treated as "[t]he equivalent of 'evidence of rehabilitation' in these circumstances." See *In re J.B.*, 386 *N.J. Super.* 512 (App Div. 2006). *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.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. *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.

Finally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that an eligible was involved in such activity may reflect upon the eligible's character and ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here, as the appellant was convicted of simple assault, a disorderly persons offense, that offense did not rise to the level of a crime. Nevertheless, the appellant's arrests could still be considered in light of the factors noted in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine whether they adversely related to the employment sought.

In the instant matter, the totality of the circumstances supports East Orange's and Bloomfield's removal of the appellant from the subject eligible list. The appellant's background includes a 2003 arrest, the record of which was expunged in 2009, and a 2006 conviction for simple assault. However, as noted

above, an expungement will not serve to automatically prevent an appointing authority from requesting the removal of an individual seeking a municipal Police Officer position. In applying the factors set forth in *N.J.A.C. 4A:4-4.7(a)4*, the fact the appellant attained a Bachelor's degree; completed a trade school and assorted programs; and has been employed in the title of Family Service Worker since 2012 are factors that mitigate in her favor. On the other hand, the Commission notes that the appellant has a 2006 conviction for simple assault in her record, which cannot be considered an isolated incident, as the underlying charges were similar to the charges which followed her 2003 arrest. Additionally, it is recognized that the appellant was an adult when both incidents occurred, being 22 years old at the time of her 2003 arrest and 25 years old at the time of her 2006 arrest. Moreover, the appellant's employment record also includes a May 2011 resignation in good standing, in lieu of removal, from the title of Juvenile Detention Officer. Furthermore, her record includes three TROs filed against her by her children's former babysitter in 2011, which were eventually dismissed. Finally, the 2006 arrest occurred within seven years of the closing date and the expungement of the 2003 arrest occurred less than four years prior to the closing date for the subject examination.

The appellant's driving record, particularly when viewed in concert with her other background issues, adds further support for the removal of the appellant's name from the subject eligible list by both East Orange and Bloomfield. Specifically, the nine violations shown in her driver's abstract, including a post-closing date summons for failing to obey a traffic control device in December 2014, raise further questions about her suitability for a law enforcement position. In that regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. 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 the utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. Her primary duty is to enforce and uphold the law. She carries a service revolver on her person and is constantly called upon to exercise tact, restraint and good judgment in her relationship with the public. She represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. See *Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also *In re Phillips*, 117 N.J. 567 (1990). Clearly, the appellant's background, including two arrests, a simple assault conviction, a mixed public employment record, multiple TROs and a significant pattern of driving infractions, reflects poorly upon her ability to enforce and promote adherence to the law. Accordingly, given the totality of the circumstances, both East Orange and Bloomfield have presented sufficient cause to remove the appellant's name from the Police Officer (S9999R) eligible list. It is therefore unnecessary to address the appellant's negative credit history.

ORDER

Therefore, it is ordered that these appeals 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 4TH DAY OF APRIL, 2018



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