



STATE OF NEW JERSEY

In the Matter of Patrick Kerney, Jr.,
Police Officer (S9999U), Bayonne

CSC Docket No. 2019-1396

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

List Removal Appeal

ISSUED: JULY 11, 2019

(SLK)

Patrick Kerney, Jr., represented by Nicholas P. Milewski, Esq., appeals his removal from the eligible list for Police Officer (S9999U), Bayonne on the basis that he falsified his application.

The appellant took the open competitive examination for Police Officer (S9999U), which had an August 31, 2016 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority presented that the appellant indicated that he resided in Bayonne since August 2016; however, credit reports, bank statements, and witness statements, including from neighbors and employees in the gym that he frequented, pointed to him living in Beachwood. Additionally, the appellant indicated that his driver's license had never been suspended when the investigation revealed that it had been in 2017. Further, while the appellant stated that he received parking violations, he did not provide specific dates, and he failed to provide his certified driver's abstract as required, which indicated six motor vehicle violations between 2012 and 2018. Also, while he admitted he had been involved in motor vehicle accidents, he could not remember the dates and the investigation revealed he had been in six motor vehicle accidents between 2011 and 2017. Moreover, the appellant omitted that he had been stopped or held as a suspicious person or witness by any law enforcement agency when the investigation revealed that in September 2015 he was arrested and charged with assault for an altercation at the PNC Arts Center and a second altercation

occurred in April 2017 at a bar in Toms River where the appellant was involved in an argument with some other patrons where he caused damage to the victim's vehicle.

On appeal, the appellant presents that he did not knowingly make any false statements. He cites a case where an appellant was restored to the list who misunderstood an application and did not intend to mislead the appointing authority. The appellant asserts that contrary to the appointing authority's statement, he has lived in Bayonne since August 2016 and the appointing authority used circumstantial evidence, such as credit reports that indicate his parents' address, to conclude otherwise. He acknowledges that he provided a previous employer his parents' address when he stayed with his parents in the summer of 2018, which may explain why his credit reports reflect his parents' address. However, the appellant argues that the evidence fails to establish that he did not live in Bayonne at the time he completed his application. Further, the appellant acknowledges that he frequently stays with his parents which is why his ATM and E-Z Pass transactions and gym use are in the area where his parents live. The appellant also believes that the appointing authority does not have an ordinance requiring Police Officer candidates to be Bayonne residents and, therefore, he argues that the location of his residency is not material. Concerning his driver's license, he was not aware that his license was suspended for 12 days in 2017 until he obtained a copy of his driver's abstract and, therefore, he did not intend to deceive. Further, the appellant did indicate that he was involved in several motor vehicle accidents and received parking and moving violations summonses. He just simply could not remember the dates and there was no deception on his part. The appellant claims, in contrast to the appointing authority's statement, he did provide his certified driver's abstract. He presents that he fully disclosed the 2015 PNC Arts Center incident and misunderstood other questions to be asking about information that he had not already disclosed. With respect to the Toms River bar incident, the appellant states that these were mere allegations which were never proven in court and the appellant was never stopped or questioned about it as the question asked, which is why he did not include this incident in response to the appointing authority's question.

Additionally, he asserts that he does not have an adverse criminal record as he was arrested one time in 2015, which was an isolated incident, and he was never convicted of a crime and, instead, received a municipal ordinance violation. Similarly, the appellant asserts that his driving record is not sufficiently poor to justify his removal from the list. He argues that his name should be restored to the list, or in the alternative, he requests that the matter be transmitted to the Office of Administrative Law for a hearing.

In response, the appointing authority, represented by Jeffrey J. Berezny, Esq., presents that the background report that was submitted to this agency indicated that in addition to the appellant falsifying his application, he also had an unsatisfactory driving record, unsatisfactory background report, and resided outside the residency

scope. Concerning residency, it indicates that Bayonne does have an ordinance that requires Police Officer candidates to reside in Bayonne from the examination closing date to appointment. Further, the investigation revealed, based on the appellant's ATM transactions, credit reports, gym membership logs, and neighborhood witness statements, that the appellant only provided a Bayonne address for the limited purpose of attempting to meet its residency requirement. For example, the appellant's bank statement in 2018 indicated over 90 transactions and not one took place in Bayonne or Hudson County. Similarly, the appellant never frequented his gym's Bayonne location and his EZ Pass statement in February 2018 showed six pages worth of transactions, but only two transactions in Bayonne. Further, the appellant's explanation that he only used cash for the Bayonne toll because it would deplete his EZ Pass account is illogical since EZ Pass offers automatic replenishment and discounts on the Bayonne Bridge. Moreover, the appellant's assertion that he travels to work over an hour a day to either Monmouth and Ocean County and uses his EZ Pass on the Garden State Parkway, but not in the Bayonne area is nonsensical. Additionally, he has not presented any bills or other documentation to demonstrate that he lived at his friend's house in Bayonne. Further, when the appellant was questioned about his residence, he initially stated that he was paying \$500 in rent and then the landlord later responded that the appellant was living there "rent free." Moreover, he indicated to his current employer that he lived in Beachwood, which he explained he did so to get the job, which is further evidence of false statements.

Regarding his background and driving record, the appellant was untruthful in answering questions concerning his driver's license being suspended and interactions with the law and courts. For example, the appellant must have been aware that his driver's license was suspended since he paid the \$100 restoration fee. Similarly, the appellant must have been aware that he attended court to dispose of the criminal assault complaint from the PNC Arts Center incident, which took place only two years prior to him completing the application. Additionally, the appellant was required to disclose the Toms River bar incident where the police report indicates that an intoxicated appellant approached the victim of the assault and swung at the driver's side window as the victim was attempting to leave, and on a subsequent date, the appellant was stopped by the police in Ocean County for driving erratically and advised he was barred from the Toms River bar in question due to the incident. Moreover, the appellant should have at least attempted to list his motor vehicle summonses and not simply state that he could not remember them. Also, an updated driver's abstract shows that he was involved in two additional motor vehicle crashes in 2018. The appointing authority argues that his multiple driving accidents combined with multiple moving violations indicates that his driving record warrants his removal from the list. Additionally, the appointing authority's records do not indicate that the appellant provided his certified driver's abstract as required. The appointing authority highlights cases that indicate that the issue is not whether the appellant intended to deceive, it is whether the information withheld was material to the position sought. Therefore, it argues that, at minimum, it needed a complete

record to make a decision regarding his candidacy. Finally, it argues that the totality of the appellant's background, which includes false and misleading statements, eight car accidents and six motor vehicle violations in the last few years, a driver's license suspension, and two altercations within the past two years, both involving law enforcement, and which occurred at alcohol-serving venues, indicates that he lacks the judgment to be a Police Officer.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the removal of an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

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 Civil Service Commission (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 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).

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, 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).

N.J.A.C. 4A:4-2.11(e)1 provides that when an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment.

N.J.A.C. 4A:4-2.11(c) provides that where residency requirements have been established, residence means a single legal residence. The following standards shall be used in determining legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner, a court order or other evidence of separation may be requested;
4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;
5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

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 this matter, the appellant's background clearly provides a basis for removal from the subject list. Initially, the appellant falsified his application and failed to

maintain a continuous residence in Bayonne. While the appellant indicated that he lived in Bayonne at the time he completed his application and continuously thereafter, the totality of the evidence suggests otherwise. Specifically, other than his mere statement, the appellant has not provided any bills or other documentation that demonstrates that he lives in Bayonne. On the contrary, the appointing authority provides bank statements, EZ Pass transactions, gym membership logs, and witness statements that indicate that the appellant lives at his parents' residence in Beachwood. Additionally, the appellant admits on appeal that he lived at his parents' house during the summer of 2018. As such, the appellant has failed to meet his burden of proof that he has continuously maintained residence in Bayonne.

Further, the appellant either lied to his employers or lives in his parents' house as the Beachwood address is listed as his address on his W-2s. Moreover, he has not provided any explanation as to why he filed 2016 and 2017 tax returns with a Beachwood address while living in Bayonne. It is noted that a federal tax return asks for the tax filer's address and then requires the filer to sign and date it. Per the tax return, the signatory represents, "Under penalties of perjury, I declare that I have examined this return and accompanying schedules, and to the best of my knowledge and belief, they are true, correct, and complete." In other words, while the appellant wants to now assert that he has continuously lived in Bayonne since the subject examination closing date, he had the opportunity to indicate that he lived in Bayonne at the time he submitted his 2016 and 2017 federal tax returns, but chose not to do so. Once again, he has either not continuously lived in Bayonne or falsified his residency on his tax return. It is noted that fraudulently completing a tax return would be cause to remove a public safety candidate from a list. See *In the Matter of Daniel Urban* (CSC, decided October 3, 2018).

Concerning any other omissions in his application regarding his driving record or other negative interactions with the law, the appellant is responsible for the accuracy of his application. See *In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Additionally, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. Therefore, even if there was no intent to deceive, in light of the appellant's driving record and other negative interactions with law enforcement and the court system, his failure to disclose his complete and accurate driving record and his complete and accurate history with law enforcement, including interactions related to the 2017 Toms River bar incident, which was after the examination closing date, was material. At minimum, the appointing authority needed this information to have a complete understanding of his background in order to properly evaluate his

candidacy. See *In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017).

Finally, the totality of the appellant's background, which includes false and misleading statements, numerous motor vehicle accidents and summonses, including after the closing date, and two recent negative interactions with the law, including one after the closing date, indicates that his background is unsatisfactory for a Police Officer. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and that 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 Office is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He 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).

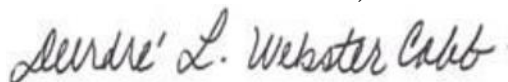
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999U) eligible list.

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 9th DAY OF JULY, 2019



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