



	:	<b>STATE OF NEW JERSEY</b>
In the Matter of Matthew Rivera,	:	
Fire Fighter (M2542M), Jersey City	:	<b>FINAL ADMINISTRATIVE ACTION</b>
	:	<b>OF THE</b>
	:	<b>CIVIL SERVICE COMMISSION</b>
CSC Docket No. 2019-351	:	
	:	
	:	List Removal Appeal
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	:	
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**ISSUED:** May 16, 2019 (BS)

Matthew Rivera, represented by Michael J. Prigoff, Esq., appeals his rejection as a Fire Fighter candidate by Jersey City and its request to remove his name from the eligible list for Fire Fighter (M2542M) on the basis of an unsatisfactory criminal background.

By way of background, the appellant, a non-veteran, after initially appearing on the Fire Fighter (M2542M), Jersey City, eligible list, was removed for testing positive for oxycodone. He successfully appealed his removal to the Civil Service Commission (Commission) and was reinstated to the Fire Fighter (M2542M) list for prospective appointment consideration only. In its decision, the Commission noted that the appointing authority's concern that the appellant was not medically fit to perform the duties of a Fire Fighter could be evaluated in the context of a medical examination after a conditional offer of employment had been made. *See In the Matter of Matthew Rivera, Fire Fighter (M2542M), Jersey City* (CSC, decided December 16, 2015). However, four days prior to granting the appellant's appeal, the Fire Fighter (M2542M) list expired on December 12, 2015. Therefore, when the subsequent list, Fire Fighter (M1554T), Jersey City was certified, the appellant's name was inserted into the second position of the outstanding certification, OL160306.

In disposing certification OL160306, the appointing authority again removed the appellant's name from the list based on a positive drug screen for oxycodone. The appellant appealed that matter to the Commission, which found that the appellant disclosed his legal use of oxycodone. Accordingly, the Commission

restored the appellant's name to the list and added his name to a subsequent outstanding certification, OL171040, which was issued on September 1, 2017. In disposing this certification, as required by *Rivera, supra.*, the appointing authority conducted an updated background check and requested the removal of the appellant's name due to an unsatisfactory criminal background. The appellant's arrest record dates back to 2001. On October 12, 2001, the appellant was arrested for aggravated assault, pled guilty to simple assault, and received a 10 day suspended confinement, fine, and 240 hours of community service. On July 11, 2004, the appellant was issued a summons for public nuisance. On February 8, 2008, the appellant was arrested for an incident that occurred on March 20, 2005, and was indicted for second and third degree aggravated assault under circumstances manifesting extreme indifference. The appellant pled guilty to simple assault, received a fine, and was ordered to pay restitution to the victim. On August 12, 2006, the appellant received a summons for urinating in public and on April 7, 2007 the appellant was arrested and charged with DUI, refusing to submit to a breathalyzer, and was given summonses for reckless driving, failure to maintain lane, and failure to wear a seatbelt. As a result, the appellant's driver's license was suspended for seven months. Further, on June 25, 2014, the appellant was arrested for a domestic violence incident, charged with simple assault and defiant trespassing. Subsequently, on July 14, 2014, the Brick Police Department responded to the appellant's home due to a possible suicidal person, as he was sending texts requesting "help, help" to an ex-girlfriend. On August 11, 2015, a Final Restraining Order was issued against the appellant for sending his ex-girlfriend multiple threatening emails.

The appointing authority's investigator also indicated that the appellant was not forthcoming during the final interview. The investigator indicated that it was "suspicious" that the appellant claimed to be a resident of Jersey City since July 2006 yet only held jobs in Brick, where his current girlfriend resides in a house that she rents from the appellant's father. The investigator noted discrepancies in the appellant's finances. The appellant owed over \$100,000 in student loans and credit card bills plus he has a car loan and pays rent, yet he was unemployed and collecting unemployment benefits. The appellant claimed that the girlfriend with whom he did not reside in Brick was helping him out financially. The appointing authority's investigator also examined the appellant's bank records and his 2016 tax return. The appellant indicated that he did not file taxes in 2014 or 2015 "because he was working off the books."

On appeal, the appellant asserts that this is his third removal appeal from this eligible list. The appellant also contends he has missed being placed in two fire academy classes. The appellant argues that the Commission's September 22, 2017 decision revived the M2542M eligible list so he could be placed on certification OL171040 and appointed with a retroactive date of July 5, 2016, provided that he passed an updated background check, updated drug screen consistent with the

decision, and passing medical and psychological examinations. Following the updated background investigation, the appellant did not receive the Certification Disposition notice because it was sent to the wrong address. The appellant appeals his removal and requests that his name be restored for consideration.

By letter dated August 8, 2018, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, provided the appellant's counsel copies of its updated Fire Candidate Background report and records. Although provided the opportunity, the appointing authority did not submit any additional arguments for the Commission to review in this matter.

### CONCLUSION

*N.J.S.A.* 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)(4), provides 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. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. *See Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relate to the position of Fire Fighter. 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 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 Commission or designee may determine. *See N.J.A.C.* 4A:4-4.7(a)4ii; *see also, N.J.S.A.* 2C:52-27(c). *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 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.

In the instant matter, the record reflects that the appellant has been arrested on multiple occasions, has an extensive history of adverse interactions with law enforcement, the most recent being June 25, 2014, which occurred during the life of the subject eligible list. 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. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Although the appellant's arrests were for disorderly persons offenses and cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that the appellant was involved in such activity, on multiple occasions, reflects upon his character and his 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). In this case, the record demonstrates that the appellant has a pattern of objectionable behavior not suitable for an applicant who aspires to a successful career in the public safety field. The Commission notes that the appellant was initially removed from the subject eligible list for testing positive for Oxycodon, without any consideration of the rest of his record. After the Commission restored his name, he was subjected to an updated background check which revealed a number of incidents dating back to 2001. The incidents in the record, which includes a recent incident, are serious enough to warrant the appellant's removal from the list.

Upon review of the documentation provided on reconsideration, the record demonstrates that there is ample evidence to support the removal of the appellant's name from the subject list. 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.

In this case, in addition to his multiple arrests, his license was suspended for DUI and refusing to submit to a breathalyzer test. Additionally, he received a Final Restraining Order on August 15, 2015, during the life of the subject list. Clearly, these adverse incidents, some occurring shortly before consideration for the position, either through arrest, licensure suspension, or Final Restraining Order, are 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. Additionally, the Commission shares the appointing authority's investigator's suspicions regarding the appellant's residency and finds it questionable that the appellant claims to rent a room in a married couple's apartment in Jersey City but that his girlfriend, who helps him out financially since he is unemployed, resides in a home owned by the appellant's father in Brick. Further, all of the appellant's employment and arrest history occurred in Brick, not Jersey City. The Commission is further mindful that the appellant could not produce tax returns for 2014 and 2015 because he informed the appointing authority's investigator that he did not file taxes because he was working "off the books." In other words, it appears that the appellant earned income that he has not reported to state and federal authorities for tax purposes. The appellant's disregard for tax law and income reporting requirements are indicative of the appellant's poor judgement, which is also not conclusive to the performance of the duties of a Fire Fighter. Accordingly, given the totality of his background, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M2542M), Jersey City list.

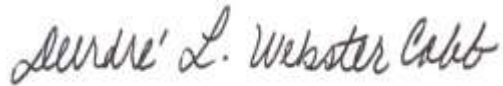
Consequently, the Commission finds that the appointing authority has presented a sufficient basis to remove the appellant's name from the subject eligible list and the appellant has failed to satisfy his burden of proof in this matter.

### **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 9TH DAY OF MAY, 2019



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