

B-12



STATE OF NEW JERSEY

In the Matter of Andrew L. Gales,
Police Officer (PM3568M), Paterson

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-3159

List Removal Appeal

ISSUED: **OCT 27 2014** (CSM)

Andrew L. Gales, represented by Curtis J. LaForge, Esq., appeals the removal his name from the promotional list for Police Officer (PM3568M), Paterson, based on an unsatisfactory background report.

By way of background, the appellant was appointed to the title of Police Assistant and, based on a successful eligibility appeal, received a retroactive effective date of October 15, 2007. *See In the Matter of Andrew Gales* (CSC, decided June 10, 2009).¹ Therefore, in accordance with *N.J.A.C. 4A:3-3.7A(e)*, after one year of service as a Police Assistant, he would be considered eligible to take a promotional examination for the title of Police Officer if one were announced. Subsequently, after the appellant completed one year of actual service performing the duties of a Police Assistant, the subject promotional examination was announced with a closing date of October 21, 2010 and the appellant was the only eligible on the list which was promulgated on November 17, 2011 and which has an expiration date of November 16, 2014. Thereafter, the appellant was laid off from the title of Police Assistant effective April 18, 2011 and exercised a lateral right to the title of Parking Enforcement Officer.

On October 9, 2013, the subject list was certified and the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory employment record, unsatisfactory criminal record, unsatisfactory driving record, and unsatisfactory background report. Specifically, the appointing authority asserted that the appellant was disciplined for chronic and excessive

¹ The appellant actually began work with the appointing authority effective September 28, 2009.

absenteeism for which he received an official written reprimand, that he was terminated on two previous occasions, that he was arrested on at least three previous occasions and had been the subject of two temporary restraining orders, that he had six reportable motor vehicle accidents and received at least 24 tickets for parking offenses and moving violations, that inconsistencies were revealed in a background investigation for a position with the State Department of Corrections concerning his reported home addresses and the reasons why he left prior employers, and that he failed a psychological evaluation administered for prospective Correction Officer Recruits.

With respect to his unsatisfactory employment history, the appointing authority indicated that, while in its employ as a Parking Enforcement Officer, the appellant received an official written reprimand because he violated the sick leave policy by using in excess of all of his allotted sick leave when medical records indicated he could return to work at full duty with continuation of therapy. It also indicated that he was terminated from Enterprise Rent-a-Car Service in 2004 because he inadvertently left vehicles unsecured and was "asked to resign" from the Passaic County Prosecutor's Office when a domestic violence TRO was filed against him. Additionally, its background investigation found that the appellant was charged by the Passaic County Prosecutor's Office with conduct unbecoming a public employee and for lack of truthfulness, but he resigned prior to the hearing on these charges. Regarding his criminal history, the appointing authority's investigation found that he had been arrested/charged on three occasions for harassment, assault, and contempt of court. The assault charge stemmed from an incident that allegedly occurred on December 7, 2001, while the appellant was employed by Foot Locker, where it was claimed that he got into a verbal altercation with a 16-year old female co-worker and allegedly harassed her by using profane language while simultaneously grabbing her shirt collar. A complaint was signed and an arrest warrant was issued for the appellant when he failed to answer the charge in municipal court. The appellant was subsequently arrested for the contempt of court charge. Further, the appellant was charged with aggravated assault and terroristic threats on December 26, 2009 stemming from a domestic violence incident. Additionally, he was the subject of two TROs for an incident in Englewood in 2006 and Paterson in 2011.

The appointing authority's background investigation also indicated that the appellant's driving record contained six reportable motor vehicle accidents from 2004 to 2013 and he had been the subject of 24 tickets issued between 2007 and 2008 for both local parking offenses and moving violations. Additionally, it was determined that the appellant was rejected for employment by the New Jersey Department of Corrections (DOC). In reviewing the DOC's background investigation, the appointing authority found that the appellant disclosed to the DOC that he had resigned from Enterprise Rent-a-Car to pursue better opportunities, but in his application with the appointing authority, he disclosed that

he was terminated. It was also discovered that the appellant had reported inconsistent home addresses during the DOC selection process and, after an evaluation by the DOC's psychologist, was not found to be psychologically suitable for the position of Correction Officer Recruit. Therefore, based on all the above, given that the appellant demonstrated a pattern of conduct that is contrary to the standards of a Police Officer, the appointing authority requested the removal of his name from the subject list.

The appellant appealed the removal of his name to the Division of Classification and Personnel Management (CPM), which referred the matter to the Civil Service Commission (Commission) for direct review.

On appeal, the appellant states that the appointing authority's request to remove his name is based on it falsely reporting matters that did not happen, or in the alternative, misstating instances of his past by only providing a small portion of the entire matter. Specifically, he claims that Director Glenn Brown had indicated he would "extract revenge" on the appellant based on a prior incident between the appellant, the appellant's great aunt, and Brown, when they were all employed by the Passaic County Prosecutor's Office. The appellant asserts that the animosity between him and Brown continued when they both became employed by the appointing authority as evidenced by Brown's efforts to thwart and delay his employment as a Police Assistant in spite of being ordered by the Commission to consider him for an appointment. With respect to his employment history, the appellant asserts that the Passaic County Prosecutor's Office internal affairs investigation of the complaint against him based on a TRO was flawed and that he was only charged with conduct unbecoming a public employee, but never charged for lack of truthfulness. He also states that he advised the DOC that he was terminated from Enterprise Rent-a-Car and did not indicate that he had resigned for a better opportunity. The appellant also argues that the appointing authority erroneously indicated that he was charged with bail jumping as he was only actually charged with simple assault in Newark in 2002. Further, he states that he provided all of the reports concerning the 2001-2002 incident in Rockaway that was ultimately dismissed. Regarding his 2009 arrest in Paterson, the appellant states that the grand jury dismissed that matter since the alleged victim did not testify. Moreover, the arrest record was expunged in 2010.

The appellant states that the appointing authority does not provide any background information surrounding the May 2006 and December 2011 TROs that were issued against him. However, he explains in detail the circumstances surrounding these situations and emphasizes that they were both dismissed. Thus, the appellant argues that the appointing authority failed to provide a complete picture of the circumstances surrounding these events in its request to remove his name from the list. With respect to his driving history, the appellant states that he disclosed all of his accidents in his application in which he was involved and notes

that he was either rear ended or side swiped in all but one of the accidents. In fact, he notes that in a February 2013 accident, he was struck by a drunk driver while on duty as a Parking Enforcement Officer with the appointing authority. Additionally, he underscores that he did not receive 24 tickets between 2007 and 2004. Rather, he states that he received some tickets between 2005 and 2014 for both parking and moving violations, but all of these tickets were timely satisfied or dismissed for lack of prosecution. With respect to the psychological testing for the DOC position, the appellant states that he obtained an independent psychological evaluation from Daniel E. Williams, Ph.D., who opined that he in fact was able to perform the duties of a Correction Officer. The appellant provides voluminous documentation in support of his appeal, which include, among other things, copies of his arrest records, expungments, driving history abstracts, Dr. Williams' report, and documents concerning his employment at the Passaic County Prosecutor's Office.

Although provided the opportunity, the appointing authority did not provide any additional arguments or information for the Commission to review in this matter.

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 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, 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).

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 the present matter, the appointing authority essentially argues that the appellant's overall background, including his prior employment, criminal, motor vehicle, and domestic violence record, reveals a significant history and pattern of repetitive violations and negative encounters with law enforcement that warrants his removal from the subject list. The Commission agrees. Initially, while employed as a Parking Enforcement Officer with the appointing authority in 2013, the appellant received discipline in the form of an official written reprimand because he violated the sick leave policy by using all of his sick time and then called out sick on several occasions to attend an EMT class. Further, it is undisputed that the appellant was arrested on December 26, 2009 by the Paterson Police Department for an outstanding domestic violence warrant, on January 8, 2002 for harassment and on September 23, 2002 for aggravated assault and terroristic threats in Rockaway Township. Further, the appellant was the subject of two TROs, one issued on April 6, 2006 and another issued on December 31, 2011. Additionally, his driver abstract documents that he received four tickets between 2000 and 2013 and 24 parking citations between May 2005 and April 2013.

Notwithstanding his explanations or the fact that each of these matters were ultimately dismissed, expunged or adjudicated, it cannot be ignored that the appellant has a significant history of adverse encounters with law enforcement which spans more than ten years. Further, his repeated motor vehicle citations and parking violations, coupled with his negative encounters with law enforcement, demonstrate the appellant's questionable judgment. While this background was not sufficient to remove the appellant's name from the eligible list for the *non-law enforcement* title of Police Assistant, these qualities are clearly not acceptable for those seeking Police Office positions. Indeed, it is noted that the appellant was again arrested in December 2009 *after* the Commission restored his name to the eligible list for Police Assistant. Moreover, it is clear that the appellant left two prior employers, the Passaic County Prosecutor's Office where he had disciplinary

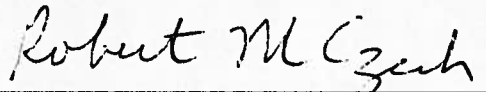
charges pending against him, and Enterprise Rent-a-Car from which he was terminated, under less than desirable circumstances. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and 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. 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). Clearly, the appellant's numerous negative encounters with law enforcement over the years demonstrate a pattern of irresponsibility and disregard for the law. Under these circumstances, the totality of the appellant's background warrants his removal from the subject 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 22nd DAY OF OCTOBER, 2014



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