

B-27



STATE OF NEW JERSEY

In the Matter of William Perez,
State Park Police Officer Trainee
(S9999M), Department of
Environmental Protection

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2589

List Removal Appeal

ISSUED: APR 07 2015 (JET)

William Perez, represented by Michael L. Prigoff, Esq., appeals the attached decision of the former Division of Classification and Personnel Management (CPM)¹, which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the State Park Police Officer Trainee (S9999M), Department of Environmental Protection, eligible list due to his unsatisfactory driving record.²

The appellant took the open competitive examination for State Park Police Officer Trainee (S9999M), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on January 24, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory driving record. Specifically, the appointing authority conducted an investigation which revealed, among other things, that the appellant's driver's license was suspended on four occasions. It is noted that the driver's abstract indicates that the appellant's driver's license was suspended from June 2, 1998 to August 23, 2002; June 19, 2005 to June 30, 2005; October 9, 2005 to October 16, 2006, and February 11, 2007 to March 14, 2007.³ Relying on the appointing

¹ Now the Division of Agency Services.

² CPM's initial determination erroneously indicated that the appellant's name was being removed from the list because he was ineligible, by law, for employment in the title.

³ The appellant's driver's abstract also indicates that his commercial driver's license was suspended from June 2, 1998 to August 23, 2002; June 19, 2005 to June 30, 2005; October 9, 2005 to October 16,

authority's "Automatic Disqualification Standards for Background Investigations" memorandum (memorandum) which implemented pre-employment processing criteria to be applied whenever conducting a background investigation for employment with the State Park Police, the appointing authority stated that applicants "with driving privileges that have been revoked or suspended in any state more than three times [will be removed from the eligible list]. This does not include an administrative medical suspension." Thus, the appointing authority requested that the appellant's name be removed from the eligible list due to the four suspensions listed on his driver's abstract. The appellant appealed the removal of his name to CPM, asserting that the appointing authority did not provide any documentation to indicate that he was ineligible for employment in the title by law. CPM upheld the appointing authority's request to remove the appellant's name from the subject eligible list.

On appeal, the appellant asserts that the appointing authority does not provide sufficient information to show that its request to remove his name was proper. Specifically, the appellant states that the appointing authority provides a one-page memorandum entitled "Automatic Disqualification Standards for Background Investigation" which indicates that candidates for law enforcement positions may be removed from a list when "driving privileges have been revoked or suspended in any state more than three times." However, the appellant explains that the memorandum does not indicate any statutory or regulatory provisions pertaining to Civil Service laws and rules to establish that candidates can be removed for such reasons. The appellant adds that his attorney conducted legal research and he was unable to locate any legal authority relating to the reasons referred to in the memorandum. Further, the appellant asserts that the facts of this matter do not demonstrate that his record contains more than three "non-administrative" suspensions of his driver's license. The appellant acknowledges that while his record reflects four suspensions, one of the suspensions was erroneous and should not be used to remove his name from the eligible list. In this regard, the appellant contends that "there are at most three such suspensions" and the "automatic disqualification standard" as set forth in the appointing authority's memorandum has not been invoked. Moreover, the appellant avers that the suspensions should be treated as "administrative suspensions."

Additionally, the appellant provides a certification in support of his contentions. Specifically, the appellant admits that his driver's license was suspended on four occasions between June 1998 and March 2007. Further, the appellant explains that his driver's license was suspended on the first occasion [from June 1998 to August 2002] due to unpaid parking tickets. He adds that he

2006, and February 11, 2007 to March 14, 2007. The driver's abstract also reflects that the appellant's registration was suspended from May 30, 1998 to August 23, 2002.

was unable to address the unpaid parking tickets⁴ since he was serving in the military for 18 months beginning in October 2000. The appellant's friend also failed to notify the appellant that a parking ticket was issued after he borrowed the appellant's car.⁵ The appellant contends that his sister hired an attorney to address the violations and the matters were dismissed in March 2002. The appellant adds that the underlying basis for his suspension on this occasion is erroneous since the matters were dismissed. As such, this incident should not be used to remove his name from the list. In addition, the appellant explains that the suspension of his driver's license on the second occasion [in June 2005], the third occasion [in October 2005], and the fourth occasion [in February 2007] occurred due to his non-payment of insurance surcharges. The appellant states that he was not timely notified that the surcharge was due on the second occasion and he could not immediately afford to pay the surcharges on the third and fourth occasions. Moreover, the appellant argues that his driver's license was restored on each occasion and the last suspension occurred more than seven years ago.

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

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. Moreover, *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 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); *In the Matter of Yolanda Colson, Correction Officer*

⁴ Records from the Automated Traffic System reflect that a ticket was issued against the appellant in violation of *N.J.S.A. 39:4-138D* for improper parking in front of driveway which was disposed of on July 30, 1998 and the appellant was fined \$81.00. The Automated Traffic System also reflects that a ticket was issued against the appellant in violation of *N.J.S.A. 39:6B-2* for driving without insurance which was dismissed on March 4, 2002.

⁵ Husayn Encarnacion submits a notarized letter dated January 19, 2015 indicating that he borrowed the appellant's car on February 1, 1998 and he failed to inform the appellant that a traffic ticket was issued.

Recruit (S9999A), Department of Corrections, Docket No. A-5590-00T3 (App. Div. June 6, 2002); In the Matter of Pedro Rosado v. City of Newark, Docket No. A-4129-01T1 (App. Div. June 6, 2003).

Initially, as noted earlier, CPM's determination should have indicated that the appointing authority requested that appellant's name be removed from the list for an unsatisfactory driving record. However, the appellant was provided with all of the material supplied by the appointing authority in support of its request to remove his name on that basis and had the opportunity to present his arguments in support of his appeal. Therefore, there is no evidence that the appellant was prejudiced by the error in CPM's determination.

In this matter, the appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a law enforcement officer. The appellant's driving record indicates that his driver's license was suspended on four occasions. His driving record also indicates numerous violations of the motor vehicle laws of New Jersey. In that regard, his complete driving record is considered for this matter. Furthermore, the last suspension occurred less than five years before he applied for the subject examination. It cannot be ignored that the appellant's driver's abstract reflects that his driver's license was suspended on four occasions, and for significant periods of time. The first suspension spanned a period of over four years, from June 1998 to August 2002 and the third suspension for one year, from October 2005 to October 2006. Regarding the appellant's argument that he served in the military for 18 months beginning in October 2000, the fact that the appellant served in the military does not establish that the suspensions listed on the driver's abstract should be ignored – especially since it had been suspended for over two years prior to the start of his military service.

Although the appellant argues that he was unaware of various parking tickets pending against him, his friend failed to inform him of a parking ticket, and the parking tickets were eventually dismissed, the Commission cannot ignore the fact that he had multiple license suspensions, for significant periods of time. The appellant's driver abstract also indicates an entry for non-payment of insurance surcharges in February 2000. While some of his incidents happened several years ago, it is clear that these violations were not limited to just one isolated incident. In this regard, it is recognized that State Park Police Officer Trainees are law enforcement employees that promote adherence to the law and, like 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 utmost confidence and trust. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also *In re Phillips*, 117 N.J. 567 (1990). The public expects State Park Police Officers to present a personal background that exhibits respect for the law and rules. Such infractions show a pattern of disregard

for the motor vehicle laws and rules and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a law enforcement position. Therefore, it is clear from the record that the appellant's driving record reflects on the appellant's character and his suitability for the position at issue.

In regard to the appellant's argument that the pre-employment processing criteria provided in the memorandum entitled "Automatic Disqualification Standards for Background Investigations" relied upon by the appointing authority was not, by itself, sufficient to remove the appellant's name from the eligible list, it is noted the Commission is not bound by the criteria utilized by the appointing authority. The Commission decides each list removal on the basis of the record presented. See e.g., *In the Matter of Debra Dygon* (MSB, decided May 23, 2000). Moreover, the appellant's argument that the list removal in this matter was not consistent with Civil Service laws or rules is without merit. Although the appointing authority did not cite any specific Civil Service rules and laws in support of its reasons for removing the appellant's name from the eligible list, the omission of a specific citation or legal authority in the memorandum does not establish that the list removal was improper. Indeed, the record shows that the appointing authority acted in accord with Civil Service laws and rules and the list removal is consistent with the reasons noted above.

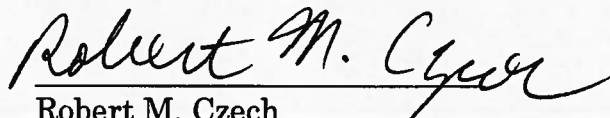
Accordingly, given the position at issue and in consideration of the totality of the evidence in the record, the appointing authority has presented a sufficient basis to remove the appellant's name from the eligible list for State Park Police Officer (S9999M), Department of Environmental Protection.

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 1st DAY OF APRIL, 2015



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: William Perez
Michael L. Prigoff, Esq.
Deni Gaskill
Kenneth Connolly
Dan Hill**



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

March 24, 2014

William Perez

Title: State Park Police Officer Trainee
Symbol: S9999M
Jurisdiction: Environmental Protection
Certification Number: OS130060
Certification Date: 1/24/13

Initial Determination: M1 - Remove – Ineligible, by law, for employment in title

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list. The Appointing Authority requested removal of your name in accordance with *N.J.A.C. N.J.A.C. 4A-F-6.1(a)2*, which permits the removal or bypass of an eligible candidate's name from the eligible list when a person is ineligible, by law, for employment in the title.

A letter was sent on 12/16/13 to the Appointing Authority to provide the documents used to remove you from the list. You had until 1/23/2014 to submit documentation supporting your appeal of the removal of your name. As of this day no additional documentation or case has been made in support of your appeal. After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (ARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to ARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to: Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Written Record Appeals Unit, PO Box 312, Trenton, NJ 08625-0312.

Sincerely,

Valerie Stutesman
Leader/Manager

c: DENI GASKILL, Director of HR DEP

MEMORANDUM FOR THE RECORD

DATE: 10/15/54

TO: SAC, NEW YORK

FROM: SAC, NEW YORK

SUBJECT: [Illegible]

RE: [Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]