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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Sean Dehais
Police Officer (S9999M), City of
Clifton

List Removal Appeal

CSC Docket No. 2014-1454

ISSUED: APR 17 2015 (WR)

Sean Dehais, represented by Stuart Alterman, Esq., appeals the attached decision of the former Division of Classification and Personnel Management (CPM)¹ which found that Clifton had presented a sufficient basis to remove his name from the eligible list for Police Officer (S9999M), City of Clifton, due to an unsatisfactory driving record.

By way of background, the appellant, a veteran, took the Law Enforcement Examination (LEE),² achieved a passing score, and was ranked on the subsequent eligible list (S9999M).³ On December 29, 2011, the appellant's name was certified for the title of Police Officer on the City of Clifton certification (OL111520) from the S9999M eligible list. Upon returning the certification on October 9, 2012, Clifton requested the removal of the appellant's name from the S9999M eligible list due to an unsatisfactory driving record. Specifically, it asserted that the appellant's driver's license has been suspended three times since December 2007,⁴ he received a summons for driving with a suspended license in 2007, he failed to appear in court for driving related offenses four times, he twice failed to pay insurance surcharges and he received four parking summons within a 20 day period. Clifton also asserted that the appellant failed to follow the instructions on his employment application by not providing a copy of his credit report despite being required to do so and failed to

¹ This function is now part of the Division of Agency Services.
² The LEE includes the title areas for Police Officer and Sheriff's Officer.
³ The closing date was August 31, 2010.
⁴ The appellant's driver's license was suspended between December 21, 2007 and May 8, 2008; July 6, 2008 and June 12, 2009; and June 29, 2011 and September 9, 2011.

answer questions on his employment application. The appellant did not appeal his removal.

The appellant's name was certified for the title of Sheriff's Officer, Passaic County (OL120874) on June 28, 2012. Passaic County returned the OL120874 certification, indicating that the appellant's name was to be retained, but he was interested in a future appointment.

On June 20, 2013, a new certification (OL130832) for Sheriff's Officer was issued to Passaic County. Thereafter, it notified the appellant that his name had been previously removed from the subject eligible list. The appellant appealed to CPM, which determined that his appeal was untimely as his name had been removed from the S9999M eligible list due to Clifton removing him from the Police Officer OL111520 certification.⁵

On appeal to the Civil Service Commission (Commission), the appellant claims that he did not appeal the removal of his name from the Police Officer OL111520 certification because "he knew there was a very low probability that [he] would be hired." He further states that he was unaware that the removal of his name from one certification would remove his name from the subject eligible list. The appellant asserts that the "sole authority" supporting his removal from the subject eligible list is, *In re Galvez*, Docket No. A-4006-09T2 (App. Div. May 11, 2011), wherein the court upheld the removal of Galvez from an eligible list for having an unsatisfactory driving record, namely four motor vehicle accidents and two moving violations within a three year period. By contrast, the appellant states that he has not been involved in any motor vehicle accidents or received any motor vehicle citations in the past five years.

In response, Clifton, represented by Thomas M. Egan, Assistant Municipal Attorney, contends that the appellant was also removed for failing to follow the instructions on his employment application by not providing a copy of his credit report despite being required to do so and for failing to answer questions on his employment application. Specifically, it claims that the appellant failed to provide an answer to the question whether he had ever driven a vehicle while his license was suspended or revoked. It claims he also failed to list a car that he owned in the "Legal/Motor Vehicle History" section of the application. Clifton further contends that the appellant did not list his score or the date he took the Law Enforcement Examination, despite the question requiring to do so.

Regarding his driving record, Clifton asserts that the appellant was also involved in a motor vehicle accident; received a conviction or pleaded guilty to

⁵ N.J.A.C. 4A:4-4.7(a) provides that "an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area."

driving without a license; and from July 20, 2007 through June 12, 2009, the appellant's driver's license was suspended for all but 81 days. Thus, Clifton contends that the appellant's driving record is worse than Galvez's and thus the court's decision in *Galvez* actually supports the appellant's removal. It further argues that, as in *Galvez*, the appellant's unsatisfactory driving record indicates a disregard for the law and poor judgment, which are necessary traits of a Police Officer.

In response, the appellant explains that he failed to appear in court three times because he was either at an Army boot camp or in military service in Iraq.⁶ It was for this reason he also failed to pay his insurance surcharges and received two suspensions of his driver's license. The appellant asserts that he "paid the surcharges and took additional action as was necessary to restore his driving privilege shortly after his return." While the appellant concedes that he did operate a motor vehicle with a suspended driver's license, he claims that it was during a short period between being released from boot camp but before he went to Iraq and he was unaware that his driver's license had been suspended. Nevertheless, the appellant states that he took the necessary actions to restore his driver's license "shortly after learning of its suspension." Finally, the appellant argues that because Clifton's other reasons for removing him from the subject eligible list were not listed on the Police Officer OL111520 certification and CPM did not reference those reasons in its determination, the Commission should disregard them.

CONCLUSION

N.J.A.C. 4A:4-6.6(a)1 provides that an appeal must be filed within 20 days of notice of the action, decision or situation being appealed. Although the appellant presents a substantive challenge regarding the removal of the his name from the eligible list from the Police Officer OL111520 certification, the controlling issue in this matter is whether the appellant's appeal of his removal from the subject eligible list was timely filed. As an initial matter, it is noted that the appellant's name was removed from the S9999M eligible list on October 9, 2012, and that notices were sent from this agency notifying him of the removal of his name shortly thereafter.⁷ However, the appellant did not file an appeal of his removal from the S9999M eligible until July 8, 2013, some nine months later. The appellant's argument that he did not promptly appeal his removal because he believed he would not have been appointed anyway and did not understand that his removal would affect his status on other certifications is not persuasive. The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the nine month delay in filing the appeal

⁶ It is noted that the appellant does not provide any evidence to support this claim.

⁷ The Revised Automated Placement System (RAPS) automatically generates notices informing eligibles that their names have been removed from an eligible list when this agency disposes of a certification, which in the instant matter occurred on October 9, 2012.

unreasonably exceeds that threshold of finality. Thus, it is clear that the appellant's appeal of his removal from the S9999M eligible list is untimely.

Nor is there any basis in this particular case to extend or to relax the time for appeal. See *N.J.A.C. 4A:1-1.2(c)* (the Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting his right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). See e.g., *Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of the Commission's appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). In this case, the appellant has not presented any reason that would excuse the nine month delay in filing his appeal. The Commission notes that the failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission's rules. See *Savage v. Old Bridge-Sayreville Med. Group*, 134 *N.J.* 241, 248 (1993) (ignorance of the specific basis for legal liability does not operate to extend time to initiate legal action). Accordingly, the appellant's appeal of his removal from the S9999M eligible list is untimely, and he has failed to show good cause to justify relaxing the requirements of *N.J.A.C. 4A:4-6.6(a)1*.

However, even assuming *arguendo*, that the appellant had filed a timely appeal, *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 employment 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.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.

While the appellant explains that he failed to appear in court and had his driver's license suspended because he was performing military duties, he offers no evidence to support his claims. Even assuming that the appellant was unavailable during the first two suspensions on his record, he fails to provide any explanation for the most recent suspension in 2011. It is noted that he received his third suspension after the closing date for the LEE. The appellant also does not explain why he failed to provide a copy of his credit report or answer questions on the employment application. Although the appellant claims that these grounds for removal should be disregarded because the Police Officer OL111520 certification and CPM did not reference them, his argument is not persuasive as he was provided with these reasons and the supporting documentation during the course of this appeal and had the opportunity to address them. Moreover, the record is clear that Clifton had also presented those additional reasons when disposing of the certification. Therefore, the Commission finds that Clifton's decision to remove the appellant's name from the subject eligible list was not in error.

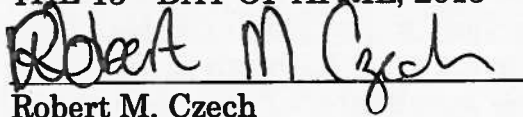
It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of 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). In this regard, the appellant's ability to drive a vehicle in a safe manner and follow the instructions on the employment application are not the main issues in determining whether or not he should remain eligible to be a Police Officer. His actions evidence disregard for the motor vehicle laws and the exercise of poor judgment. Such qualities are unacceptable for an individual seeking a position as a Police Officer. Accordingly, the appellant has failed to meet his burden of proof in the matter and a sufficient basis exists in the record to remove the appellant's name from the eligible list for Police Officer (S9999M), City of Clifton.

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 15th DAY OF APRIL, 2015**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

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

Attachment

**c: Sean Dehais
Stuart Alterman, Esq.
Dominick Villano
Thomas M. Egan, Assistant Municipal Attorney
Alex D. Blanco, Mayor
Kenneth Connolly**



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

Chris Christie
 Governor
 Kim Guadagno
 Lt. Governor

Robert M. Czech
 Chair/Chief Executive Officer

October 29, 2013

Sean Dehais

RE: Removal of name from Symbol
Title: Sheriff's Officer
Jurisdiction: Passaic County
Symbol: S9999M

Certification No: OL120874
Certification Date: 06/28/12

Dear Mr. Dehais:

This is in response to your correspondence contesting the removal of your name from the above-referenced Symbol (S9999M).

You state that you believed your name would continue to appear on future certifications because of the message printed in the Certification Disposition Notice you received in relation to the Passaic County Sheriffs Officer list (OL120874). These messages are automatically generated based on the specific code used to dispose of that certification only, precisely because it is possible for an eligible's name to appear on multiple certifications to various jurisdictions simultaneously. However, once a code is recorded which removes the name of an eligible, the eligible's name will no longer be certified for any future certification for that symbol, but does not remove the name from any certifications which have already been issued.

Your name appeared on multiple certifications to several Appointing Authorities at the same time:

	City of Clifton	Passaic County
Certification	OL111520	OL120874
Title	Police Officer	Sheriffs Officer
Issued	12/29/2011	06/28/2012
Returned & Recorded	10/09/2012	06/17/2013
Disposition Code	RD (Remove - Driving)	I7 (Retain - Deferred)

After the Clifton certification was recorded, your name was removed from the Law Enforcement Pool; a Certification Disposition Notice was sent to the address on file (██████████) which informed you that your name would be removed because the Appointing Authority's background investigation found that your driving record did not meet their standards. The Notice describes Appeal Procedures which must be submitted in writing to this Agency within twenty (20) days of the notice date.

Your appeal letter cites Certification OL120874, which was issued to Passaic County on 6/28/2012 and recorded on 6/17/2013. That Appointing Authority requested that your name be retained as interested, but that you were not available for appointment.

Although your appeal letter was submitted within twenty days of the disposition of the certification issued to Passaic County (OL120874), your appeal addresses the wrong certification; your appeal of the removal of your name should have been submitted within twenty days of the disposition of certification OL111520. Therefore, your appeal is untimely, as the appropriate certification was recorded 10/09/2012.

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 decision to remove your name has been sustained and your appeal is denied.

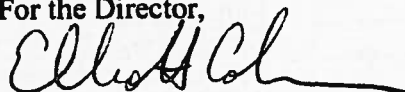
In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. 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 (C44:10-55 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 Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Elliott Cohen,
Local Placement Services

c: Matthew U. Watkins

Matthew U. Watkins
City Manager
City Of Clifton
900 Clifton Avenue
Clifton NJ 07013