

B-4



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Mylon Kelsey, Police
Officer (Special), City of Trenton

List Removal Appeal

CSC Docket No. 2015-1021

ISSUED: APR 20 2015

(SLD)

Mylon Kelsey appeals the attached decision of the Division of Classification and Personnel Management¹ (CPM) to uphold the removal of his name from the Police Officer, City of Trenton (Trenton) special reemployment list due to an unsatisfactory background report.

As background, the appellant was laid off from his Police Officer position effective September 16, 2011. The appellant's name was placed on the special reemployment list for Police Officer. A certification was issued to the appointing authority on April 2, 2013. Upon disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background report. Specifically, it indicated that the appellant had been arrested on January 19, 2011 and charged with aggravated assault with a deadly weapon, possession of a weapon and possession of a weapon for unlawful purpose. Due to the arrest, the appellant had been immediately suspended without pay prior to his layoff. Subsequently, on September 20, 2013 the appellant was found guilty of simple assault, and sentenced to one year probation, 40 hours of community service, fined \$650 and required to pay restitution in the amount of \$1,000. The appellant appealed his removal to CPM, which found that the appointing authority's request to remove his name was sustained.

On appeal, the appellant argues that he was never provided with an administrative hearing or an opportunity to argue his good standing as a Police

¹ Now the Division of Agency Services.

Officer before his removal from the eligible list. In this regard, the appellant argues that his removal from the special reemployment list violates his due process rights since he was entitled to a hearing on any administrative/disciplinary charges prior to the imposition of any major disciplinary action. The appellant maintains that although he was provided a Loudermill hearing on January 21, 2011, he was merely told of the charges against him and that he would be immediately suspended pending the outcome of the criminal charges. He asserts that he was never provided a Preliminary Notice of Disciplinary Action (PNDA), nor was he provided a departmental hearing as required by *N.J.A.C. 4A:2-2.5*. Moreover, the appellant argues that since he was never provided with either a PNDA or a Final Notice of Disciplinary Action (FNDA), he could not have timely requested a hearing within 20 days of receipt of the FNDA. Finally, he requests a stay pursuant to *N.J.A.C. 4A:2-1.2* to allow his name to remain on the subject special reemployment list, pending his appeal of his conviction. In this regard, he asserts that the prosecutor failed to provide the Internal Affairs Report to his attorney that calls into question his identification and subsequent arrest, as well as the circumstances surrounding the assault. In support, he submits a copy of the report.

Despite an opportunity, the appointing authority did not submit a response.

CONCLUSION

N.J.A.C. 4A:8-2.3(c)3 provides that the removal of names from a special reemployment list may be made in accordance with applicable rules. *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, *inter alia*, police officer titles. Additionally, pursuant to *N.J.S.A. 11A:4-10*, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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, supra*. Finally, *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:2-1.2(c) provides the following factors for consideration in evaluating a petition for a stay and interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

In the instant matter, the appointing authority requested the appellant's removal from the special reemployment list due to his conviction for simple assault. Although the appellant requests a stay pending the disposition of his appeal of that conviction, as noted above, his arrest alone may be considered. However, other than the appellant's arguments concerning the failure to provide the Internal Affairs Report to his attorney, the appellant provides no explanation for his arrest and/or his ultimate conviction. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence 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 utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of public 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 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also *In re Phillips*, 117 *N.J.* 567 (1990).

Additionally, in reviewing this matter, the Commission notes that pursuant to *N.J.A.C.* 4A:8-2.3, the only options available to the appointing authority when dealing with a reachable eligible on a special reemployment list is to either appoint the eligible or remove the eligible. Thus, since an eligible's name cannot be bypassed on a special reemployment list, the appellant's name cannot remain on the list pending his appeal of his conviction. Moreover, the appellant has not satisfied any other prongs of *N.J.A.C.* 4A:2-1.2 since the harm he is suffering, *i.e.*, his

removal from an eligible list, does not change the status quo of his layoff and can be remedied. In this regard, if the appellant is successful in overturning his conviction, he may petition the Commission to reopen this matter.

With regard to the appellant's arguments concerning procedural errors during his suspension, his appeal is untimely. See *N.J.A.C.* 4A:2-1.1(b). Nor is there any basis in this 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 Board'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 over three year delay in filing his challenge to the procedures implemented during his suspension. Instead, the appellant merely states that he was unable to file an appeal because he was not provided with a FNDA prior to his layoff. However, the Commission does not find this argument persuasive, as he could have timely requested interim relief after his suspension since there is no Civil Service rule or law that prohibits an individual from filing an appeal prior to receipt of a FNDA, especially if the subject of the appeal is the procedures used in implementing a disciplinary action. The appellant's 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 Commission finds that sufficient cause has been presented to remove the appellant from the special reemployment 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 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 Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: Mylon Kelsey
Terry McEwen
Kenneth Connolly
Joseph Gambino**



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 314
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

September 15, 2014

Mylon Kelsey

Jurisdiction: Trenton
Title: County Police Officer
Symbol: Special
Certification No: OL130437
Certification Date: 04/02/13

Initial Determination: Removed – Unsatisfactory Background report

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. 4A:4-6.1(a)9, which permits the removal of an eligible candidate's name from the eligible list for "Other sufficient reasons".

In support of its decision, the Appointing Authority provided a narrative and related pages of an incident which occurred in 2011, detailing your involvement in a fight while off-duty. The incident resulted in charges of aggravated assault with a deadly weapon; possession of a weapon; and possession of a weapon for unlawful purpose. These charges were later downgraded and you were found guilty of simple assault and sentenced on that charge in September of 2013.

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 the 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 (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 Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Elliott Cohen
Human Resource Consultant
Local Placement Services

Terry K. McEwen
Trenton Central Personnel Office
319 East State Street
Trenton NJ 08608 - 1866

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 350

LECTURE 1

1