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STATE OF NEW JERSEY

In the Matter of Gerard Ambrosino,
Fire Fighter (M2600M), Teaneck

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2710

List Removal Appeal

ISSUED: JUL 16 2015 (SLK)

Gerard Ambrosino appeals the attached determination of the Division of Agency Services (Agency Services) upholding the removal of his name from the eligible list for Fire Fighter (M2600M), Teaneck, on the basis of an unsatisfactory background report.

By way of background, the appellant's name appeared on certification OL140389¹ that was issued to the appointing authority on March 27, 2014. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory background report. Specifically, the background report indicated, among other concerns, that there were issues concerning the appellant's character including that he was terminated from two prior employments and disciplined for low productivity, that there were civil judgments against him, that his New Jersey driver's license was suspended twice and he was involved in another accident, and that he failed to disclose the suspensions and accident on his application. The appellant appealed the matter of the removal of his name from the subject list to Agency Services, which found that the appointing authority sustained its request.

On appeal, the appellant presents that although he received the background report, he claims that he has not received any explanation as to why he was

¹ The appellant's name appeared in the 14th position. It is also noted that the appointed authority only made appointments up to the eligible in the 11th position on this certification. Further, a subsequent certification, OL141639, was issued to the appointing authority on December 15, 2014 and had a disposition due date of June 15, 2015. However, agency records indicate that this certification has not yet been disposed.

removed from the eligible list. The appellant provides that the letter from Agency Services states that the background report included numerous violations listed on his Certified Driver Abstract, some of which he failed to list on his application. The appellant asserts that he was completely honest in completing his application and that if he failed to provide any information regarding his driving record; this was because he did not remember it due to the length of time.

In response, the appointing authority, represented by Jennifer Roselle, Esq., asserts that the appeal should be dismissed as untimely. Specifically, it provides that the Division of Classification and Personnel Management² (CPM) instructed the appellant that he had twenty days from September 5, 2014 to appeal the appointing authority's decision and he failed to do so. Thereafter, it presents that on February 25, 2015, Agency Services informed the appellant that it was upholding the appointing authority's determination, that he had twenty days to file an appeal with the Division of Appeals and Regulatory Affairs (DARA), and that his appeal to DARA was not received until March 27, 2015.

The appointing authority also argues that the appellant failed to demonstrate personal integrity or honesty. It indicates that the appellant failed to disclose his driver license suspensions and his involvement in a motor vehicle accident. The appointing authority maintains that although the appellant claimed ignorance regarding three separate civil judgments that are on his CLEAR report during his background investigation, he has not provided any support for his position. Additionally, it presents that the appellant was twice terminated from employment and once disciplined for low productivity. Consequently, the appointing authority argues that the appellant's background demonstrates that he lacks the judgment, candor, and responsibility required to be a Fire Fighter.

The appellant did not respond nor did he submit any further information or arguments for the Commission to consider.

CONCLUSION

N.J.A.C. 4A:2-1.1(b) provides that an appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

² Now known as the Division of Agency Services.

N.J.A.C. 4A:4-4.7(a)11 provides that the name of an eligible may be removed from an eligible list for other valid reasons as determined by the Chairperson of the Commission or designee.

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 this matter, the appellant sent a letter dated July 14, 2014 to CPM indicating the he was seeking information to appeal the removal of his name from the subject eligible list. In a letter dated September 5, 2014, CPM sent the information utilized by the appointing authority justifying its decision to remove his name. The letter stated that the appellant had 20 days to submit appeal arguments. However, the appellant did not respond. As such, on February 25, 2015, CPM issued its initial determination sustaining the appointing authority's decision and informed the appellant that he had 20 days to appeal to DARA. In a letter dated March 27, 2015 and postmarked April 1, 2015, the appellant submitted his appeal to DARA. Therefore, even providing the appellant an extra five to seven days to account for delays in sending and receiving mail, it is noted that the appellant's appeal is untimely. Additionally, although given the opportunity, the appellant has not provided any explanation as to why he did not respond to CPM at all and did not file an appeal with DARA in a timely fashion.

Nevertheless, the Commission will address the merits of the case. In this regard, on question 67 of the appellant's employment application, he indicated that he was never named as a party to a civil lawsuit. However, the appointing authority presents that there are three civil judgments against him. Further, the appellant's CLEAR report lists the appellant's name for the judgments and the address for the judgments matches his past address. Moreover, although given the opportunity, the appellant did not provide any response or explanation regarding these judgments on appeal. The Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. Accordingly, the Commission finds that these are the appellant's judgments and that he falsified his application³ by not indicating that he had ever been involved in a lawsuit.

³ The appointing authority also accused the appellant of falsifying his application by not indicating that his driver's license had been suspended twice and that he did not list that he was involved in a motor vehicle accident in a separate incident. However, in response to question 33 on his employment application, he did indicate that his driver's license was suspended twice. Further, the

The appointing authority also asserts that during his background investigation, the appellant admitted that he was terminated from Applebee's in 2003 for not completing his required "side work" at the end of his shift and terminated from Costco Wholesale in 2004 for the use of an unearned sick day. Further, the appellant admitted that he was disciplined at work in 2008 for "low productivity for an afternoon's work." Although given the opportunity, the appellant did not provide any response or explanation regarding these employment issues. Consequently, the Commission finds that the appellant has an adverse employment history.

In summary, the appellant did not reply to the appointing authority's evidence and allegations that he had an adverse credit and employment history or that he falsified his application. Additionally, he has not provided any evidence to rebut the appointing authority's claim that his adverse credit and employment history and the fact that he falsified his application evidence that he lacks good character. Therefore, the totality of the appellant's background demonstrates he lacks the character for a Fire Fighter position. 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. *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998).

Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Fire Fighter (M2600M) eligible list

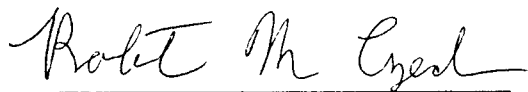
ORDER

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.

employment application did not ask him to list "his involvement in a motor vehicle accident" or any similar question.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15th DAY OF JULY, 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: Gerard Ambrosino
Jennifer Roselle, Esq.
William Broughton
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF AGENCY SERVICES
P. O. Box 313
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Robert M. Czech
Chair/Chief Executive Officer

February 25, 2015

Gerard Ambrosino

Title: Fire Fighter
Jurisdiction: Teaneck
Symbol: M2600M
Certification No: OL140389
Certification Date: 03/27/2014

Initial Determination: Removal of name from list

This is in response to your July 14, 2014 letter regarding the removal of your name from the above eligible list. In your letter, you indicated that you were seeking information to appeal the removal of your name.

This office sent to you the information utilized by the Appointing Authority justifying their decision to remove your name in a letter dated September 5, 2014. You were informed in that letter that you had twenty (20) days to submit your appeal arguments. To date, we have not received a formal appeal from you or your representative. The time period to submit arguments has now elapsed and we therefore have made our determination based on the information submitted by all parties.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-4.7(a)11, which permits the removal of an eligible candidate's name from the eligible list for "valid reasons as determined by the Chairperson of the Civil Service Commission or designee".

In support of its decision, the Appointing Authority provided a copy of your background report which included numerous violations listed on your Certified Driver Abstract, some of which you failed to list on your application.

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

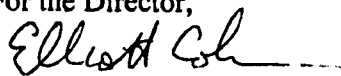
put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

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 (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
Human Resource Consultant

c: William Broughton
Township of Teaneck
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