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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Fernando Barros,  
Jr., Police Officer (S9999R),  
City of Newark

List Removal Appeal

CSC Docket No. 2016-2917

ISSUED: DEC 22 2016 (ABR)

Fernando Barros, Jr., represented by Anthony J. Fusco, Jr., Esq., appeals the removal of his name from the Police Officer (S9999R), City of Newark eligible list on the basis of an unsatisfactory criminal record and the falsification of his application.

The appellant took the open competitive examination for Police Officer (S9999R), Newark, which had a closing date of September 4, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 2, 2014 and expires on May 1, 2017. The appellant's name was certified to the appointing authority on August 27, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record and falsification of his Background Investigation Questionnaire (Questionnaire). Specifically, the appointing authority asserted that the appellant was charged with obstructing the administration of law or other governmental function in violation of *N.J.S.A. 2C:29-1* in 2009, which was dismissed on March 5, 2009, and disorderly conduct in violation of *N.J.S.A. 2C:33-2(a)* in 2010, which was dismissed on March 31, 2010 due to lack of prosecution. In the Questionnaire, the appellant stated that his 2009 arrest occurred at the location of a car accident involving his brother where the appellant, concerned about his brother's condition, did not comply with instructions to leave the scene. The appellant explained that he did not leave because officers would not advise him of his brother's condition. As to the 2010 incident, the appellant claimed that he was arrested after trying to enter a Portuguese social club where officers were responding to a dispute. He explained that he disregarded officers' instructions not to enter the club because he was "acting out of emotions,"

namely concern for the well-being of family members located inside of the club. The appellant also acknowledges that drinking played a role in his actions during the 2010 arrest. The appointing authority also claimed that the appellant had previously pled guilty to the following charges: underage gambling in violation of *N.J.S.A. 5:12-119* on February 20, 2001; playing a loud stereo in public, in violation of Borough of Belmar (Belmar) Ordinance 16-12.1G in 2001; and a summons from Hillside Township for having an illegal apartment in 2004. The appointing authority also contended that the appellant falsified his application by failing to disclose the Belmar charge and conviction.

On appeal to the Civil Service Commission (Commission), the appellant argues that a review of the factors set forth under *N.J.S.A. 11A:4-11* demonstrates that his removal from the subject eligible list due to an unsatisfactory criminal history was improper. Specifically, he contends that his 2009 and 2010 arrests are not disqualifying because a significant amount of time has passed since those incidents. The appellant adds that Officer Greg Menza of the Hillside Township Police Department, the officer who arrested him in 2009, attested to his rehabilitation in a letter of support that was submitted to the appointing authority with the appellant's Questionnaire. The appellant stresses that his 2001 and 2004 convictions were isolated events that occurred when he was young and were not serious. The appellant also states that he was 20 years old when he was issued a summons for underage gambling, 21 years old when he received a summons for playing a loud stereo in public and 24 years old when he received the summons for an illegal apartment.

Additionally, the appellant argues that his failure to include the 2001 summons for playing a loud stereo in public in the Questionnaire was not willful and thus does not warrant his removal from the eligible list. He claims that he did not remember the incident until the appointing authority mentioned it to his attorney in June 2016 and that his omission of that summons from the Questionnaire was an honest mistake. The appellant explains that he had been driving a vehicle with a radio turned on when he received that summons. The appellant adds that if the appointing authority had asked him about that summons during its background investigation, he would have explained what had transpired. Lastly, the appellant notes that question 33 in the Questionnaire only contained three spaces for arrests or charges for disorderly persons offenses or violations of municipal ordinances and that he filled in all three lines, as required.<sup>1</sup>

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, argues that it appropriately removed the appellant's

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<sup>1</sup> It is noted that each of the three spaces provided under question 33 of the Questionnaire for an arrest/charge includes a single line that allows an applicant to explain the underlying circumstances. On each of those three lines, the appellant wrote "Please see attached statement" and submitted additional pages with detailed explanations of each charge listed in the Questionnaire.

name from the eligible list on the basis of an unsatisfactory criminal record and his omission of material information from his Questionnaire. With respect to the appellant's criminal record, the appointing authority stresses that the appellant's 2009 and 2010 arrests were serious incidents where the appellant interrupted police investigations and removed officers' focus from the scene to address the appellant's disruptive conduct. Specifically, it claims that with the 2009 arrest, the appellant purposefully obstructed the administration of law by physically interfering with an accident scene and disregarding police instructions to vacate the area of the accident. It observes that with the 2010 arrest, the appellant recklessly created a threatening environment for police and civilians by forcing his way back into a club where officers were responding to a dispute and attempting to restore order. It asserts that he also stated to the officers "[y]ou're talking out your ass, do you know who I know?" The appointing authority notes that the appellant was aged 28 and 29 at the time of those arrests; more than old enough to have the capacity to act responsibly and understand the importance of obeying the simple instructions offered by the police. It adds those arrests were not isolated events, as in 2001 the appellant pled guilty to summonses for underage gambling and playing a loud stereo in public, as well as a summons for having an illegal apartment in 2004.

Furthermore, the appointing authority contends that the appellant's letter of support from Officer Menza does not overcome the seriousness of the appellant's arrest record. It also questions the authenticity of that letter because it is unsigned and undated and it argues that Officer Menza's statements are not properly in the form of a certification or an affidavit. The appointing authority contends that the appellant's failure to include his 2001 summons for playing a loud stereo in public on his Questionnaire also supports his removal from the subject eligible list. Finally, it argues that the fact that the appellant remembered to include the 2001 summons for underage gambling shows that the omission of the Belmar charge and conviction was not an honest mistake, particularly when considering that the appellant had a period of time to review the completeness of his application before it was due.

### CONCLUSION

*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 prohibits an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. 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:4-4.7(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. *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 instant matter, the appointing authority requested the appellant's removal on the basis of his criminal history, which included the appellant pleading guilty in 2001 for underage gambling and playing a loud stereo in public and in 2004 for having an illegal apartment. His record also evidenced an arrest in 2009 for obstructing the administration of the law and an arrest in 2010 for disorderly conduct. The appellant argues that he should not have been removed from the subject eligible list since the three guilty pleas were for minor isolated incidents that occurred during his youth and the two arrests did not result in convictions. Moreover, he explains that during both the 2009 and 2010 incidents, he was acting out of concern for family members and was attempting to check on their condition. Furthermore, he argues that there is sufficient proof of his rehabilitation, as evidenced by the letter from Officer Menza. However, the Commission does not agree. Rather, a review of the record demonstrates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list.

At the outset, it is noted that while the charges stemming from the appellant's 2009 and 2010 arrests were dismissed, the appointing authority may properly consider whether those arrests adversely relate to the Police Officer title in accordance with the criteria listed in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4*. The record shows that both arrests involved events where the appellant's disruptive conduct diverted the attention of officers responding to calls involving serious incidents. Specifically, the 2009 arrest occurred after the appellant went to the location of a motor vehicle accident and disregarded responding officers' repeated orders to leave the interior of the accident scene, while the 2010 arrest transpired at a Portuguese social club where officers had been called to respond to a dispute.

Immediately prior to the 2010 arrest, the appellant antagonized responding officers, telling them “[y]ou’re talking out your ass, do you know who I know?” right before he attempted to force his way inside the club. The appellant was 28 years old at the time of the 2009 arrest and 29 at the time of the 2010 arrest. The latter arrest occurred less than four years before the September 2013 closing date for the subject examination. Moreover, the arrests were not isolated incidents as evidenced by the appellant’s three guilty pleas in 2001 and 2004. Finally, other than an undated letter from Officer Menza, the appellant has failed to present any evidence of rehabilitation.


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 that 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 Office 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 criminal history with multiple arrests involving willful disregard of police officers’ lawful orders reflects poorly upon a candidate’s ability to enforce and promote adherence to the law. It also raises questions concerning the appellant’s temperament, judgment and overall ability to perform the duties of that position. Accordingly, the foregoing demonstrates sufficient grounds to remove the appellant’s name from the eligible list on the basis of an unsatisfactory criminal record. It is, therefore, unnecessary to determine whether the appellant’s omission of a 2001 summons for playing a loud stereo in public from his Questionnaire would also support the removal of his name from the eligible list on the basis of a falsified application.

### 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 21<sup>ST</sup> DAY OF DECEMBER, 2016

  
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