



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Ray Lee,
Fire Fighter (M1548T),
Linden

CSC Docket No. 2018-570

List Removal Appeal

ISSUED: APRIL 23, 2018 (CSM)

Ray Lee appeals the removal of his name from the eligible list for Fire Fighter (M1548T), Linden on the basis of an unsatisfactory driving record.

The appellant, a non-veteran, took and passed the open competitive examination for Fire Fighter (M1548T), which has an expiration date of March 10, 2019. In disposing of the certification (OL160958), the appointing authority requested the appellant's removal due to an unsatisfactory driving record. Specifically, the appointing authority included the appellant's five-year Driver Abstract, dated February 23, 2017, which revealed violations for abandoning a vehicle on private property on March 5, 2016, improper display/fictitious plates on June 10, 2015, speeding on May 26, 2014, and obstructing passage of another vehicle on September 7, 2013. It also indicated that the appellant's license was suspended from October 14, 2016 to November 16, 2016. The appellant's abstract indicates that his license is in good standing. It is noted that no appointments were made from the subject certification. However, the list was subsequently certified on August 11, 2017 (OL170949) and the appellant's name could have been bypassed on that certification.

On appeal, the appellant states that it is his understanding that violations that could disqualify him for placement on the subject list are such things as DWI/DUI, of which he has never been subject to, or criminal moving violations, which he does not believe he has violated. Further, he states that he did have a recent license suspension, which was for an unpaid parking ticket. However, he explains that he was not aware of this until he received the notice of suspension and

then immediately took care of the matter. Therefore, the appellant requests that his name be restored to the subject list.

In response, the appointing authority provides another copy of the appellant's driver's abstract.

It is noted that the appellant may be bypassed on the subject certification under the "Rule of Three." See *N.J.A.C.* 4A:4-4.8(a)3.

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.

With respect to the appellant's driving history, *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 (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. The Commission has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle violations 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). However, a similar standard does not exist for Fire Fighters. Compare, *In the Matter of John Rispoli*, Docket No. A-6849-97T3 (App. Div. December 2, 1999) (Driving record does not provide evidence of inability to perform the duties of a Fire Fighter in the way a poor driving record may evidence a disrespect for the law adversely affecting a Police Officer's ability to perform his or her duties). The former Merit System Board has also reversed the suspension and removal of a Fire Fighter where it was determined that possessing a driver's license was not an essential function of the job. See *Whittle v. East Orange Fire Department*, 95 *N.J.A.R.* 2d (CSV) 83 (1994). Compare, *In the Matter of William Bryant, Jr.* (MSB, decided July 25, 2000) (Since possession of a driver's license was essential in Jersey City, the Merit System Board upheld the removal of a Fire Fighter who had his driver's license suspended for a DWI offense and failed to report it to his superiors); *In the Matter of Aivery Walden, City of Paterson*, Docket No. A-2350-09 (App. Div. July 14, 2011) (Appellate Division upheld removal of a Fire Fighter who was convicted of two DWI's finding that the

appellant produced no evidence of a disability and that the appointing authority offered him an opportunity for rehabilitation).

In the instant matter, the appellant's driving record revealed one moving violation for which he received two points on his license in 2014 and three non-moving violations between 20013 and 2016. Additionally, although his license was suspended, it was for an unpaid parking ticket, and once he became aware of the problem, the appellant immediately took steps to remedy the situation. Therefore, the appellant's driving history does not constitute a basis for his removal from the subject eligible list. *See also In the Matter of James Hines* (MSB, decided February 20, 2002) (Fire Fighter candidate restored to eligible list, finding that his driving record did not constitute a basis for removal). Moreover, despite the appellant's driving history, he possesses a valid license.

Nevertheless, it is clear that the appointing authority, in its discretion under *N.J.A.C. 4A:4-4.8*, can take a candidate's background into account in deciding whether or not to bypass the candidate on an eligible list. *See In the Matter of William Oakley* (MSB, decided June 20, 2007). In the present case, the appellant's driving record clearly presents a sufficient basis to bypass his name on the subject eligible list. It is emphasized that, regardless of whether or not the position sought is in law enforcement, having a good driving history is an important function for a position that may require a driver's license.¹ Further, the Commission notes that the appellant does not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Accordingly, the appellant's name shall be restored to the eligible list for Fire Fighter (M1548T), Linden, but recorded as bypassed on the subject certification.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the Fire Fighter (M1548T), Linden, eligible list for prospective purposes only, but that his name be reflected as bypassed on the subject certification.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ The job specification for Fire Fighter states that "[a]ppointees will be required to possess a driver's license valid in New Jersey only if the operation of a vehicle, rather than employee mobility, is necessary to perform the essential duties of the position."

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON THE
18TH DAY OF APRIL, 2018

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