



STATE OF NEW JERSEY

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

In the Matter of Christie Crossley,
Fire Fighter (M1544T), Jersey City

CSC Docket No. 2018-778

List Removal

ISSUED: June 7, 2018 (RE)

Christie Crossley, represented by Edward Kerwin, Esq., appeals the decision of Jersey City to remove her name from the eligible list for Fire Fighter (M1544T), Jersey City on the basis of an unsatisfactory background report.

The appellant, a non-veteran, took and passed the open competitive examination for Fire Fighter (M1544T), which has an expiration date of March 10, 2019. In disposing of the January 27, 2017 certification (OL170100), Jersey City requested the removal of the appellant's name based on for an unsatisfactory background report. Specifically, it asserted that the appellant had been arrested in August 2012 and charged with simple assault and criminal mischief, which were dismissed. It also indicated that she had been arrested in Florida on February 25, 2007 for criminal mischief and the charges were disposed via Pre-Trial Intervention (PTI). The appointing authority also indicated that the appellant was arrested for domestic battery in December 2004, and the charges were dismissed and for shoplifting in November 2005 which was resolved via a diversionary program. Additionally, the appointing authority's background report indicated that she was a defendant in a harassment complaint in September 2012 which resulted in the issuance of a temporary restraining order (TRO). It also indicated that she omitted five addresses and her current employer from her applications, and that she was listed as a suspect on several burglary, theft and harassment reports and complaints. The appointing authority also noted that she was rejected for a Police Officer position with Berkley Township on the basis of an unsatisfactory background, arrest history, and residency.

On appeal, the appellant states that it is unclear what, if any weight that the appointing authority gave to the background report completed by Berkley Township when it removed her name from the eligible list for Police Officer. However, she argues that she listed her current residence in that matter and did not falsely list an improper prior address. Further, the appellant concedes that she had domestic issues with her ex-husband, but emphasizes that they now see each other weekly without difficulty and he recommended her for the position. She lists the positive references that she received, her positive education and employment history, and that she has satisfied or appealed outstanding debts. With respect to her past contacts with law enforcement, the appellant indicates she has never been convicted of a crime, and that the domestic battery charges against her were dismissed. Regarding the domestic battery incident, the appellant explains that she was a juvenile when she had an argument with her brother over his changing the channel on the television, and she slapped him, grabbed the remote control, and smashed it against a wall. Regarding the shoplifting incident, she states that she was a juvenile who made a poor choice, paid restitution and participated in a diversionary program. As to the arrest in 2007 for criminal mischief, the appellant explains that she and another individual threw eggs at a building. There was minimal property damage and she successfully completed a PTI program, with no convictions on her record. As to the arrest in 2012 for simple assault and criminal mischief, the appellant presents that she was 22 years old and her marriage was unsuccessful and resulted in a divorce. However, there was an incident that resulted in charges that were ultimately dismissed. The appellant argues that the appointing authority is never given *carte blanche* to disqualify applicants merely because they have an arrest record with no convictions. In her case, she argues that the appointing authority provided no explanation for her removal nor has it explained how particular issues would impact her ability to be a firefighter. The appellant maintains that her name should be restored to the list based on evidence of rehabilitation and the passage of time and provides letters of recommendation from two Fire Fighters and a Fire Captain.

In response, Jersey City, represented by James Johnston, Esq., Assistant Corporation Counsel, provides a copy of the appellant's background report, which includes police reports for each of the four incidents involving domestic battery, shoplifting, criminal mischief, and simple assault and criminal mischief. It contends that her background contains credible information that relate adversely to the position of Fire Fighter, specifically, that she has been involved in multiple criminal offenses which reveal consistently poor decision-making in resolving conflicts with others. The appointing authority concedes that the arrests did result in convictions, but maintains that the nature of the incidents reveals an inability to properly deal with stressful situations and resolve conflicts with others, necessary qualities of a Fire Fighter. It states that it is obligated to question eligibles for Fire Fighter positions about arrest records and facts surrounding arrests, and that the public expects Fire Fighters to present a personal background of respect for the law and the rules. In this regard, it argues that the appellant is

not suitable for a “safety-sensitive” position given that she has a history that included assaulting her brother, forced entry into her ex-husband’s house at 3:00 am, allegedly assaulted him resulting in minor facial lacerations, and attempted abduction of their child, and throwing eggs at the residence of a former roommate which whom she had split under bad terms. It concludes that she has anger management issues and handles conflict inappropriately, which is not suitable for the dangerous, stressful work of a Fire Fighter.

The appointing authority maintains that the facts of the arrests and the lack of credibility surrounding her explanations are problematic. For example, she slapped her brother because they were arguing, she threw eggs at her roommate’s residence after an argument, and she certified that she forced her way into her ex-husband’s house at 3:00 AM while he had lawful custody of their child simply to reconcile with him. Also, regarding the incident at her ex-husband’s house, in 2012, she stated that she had no trust in the local police department, which is problematic, as Fire Fighters are expected to work with the police. Further, the appointing authority argues that the appellant failed to submit required information, which evidences difficulty in following orders. She did not disclose multiple prior residences, one in New Jersey and four in Florida, and the name of her current employer on her background report. She explained that she moved a lot and forget the addresses, and did not include her current employer as she “misread the description.”¹ The appointing authority argues that this is evidence of an inability or commitment to soundly follow orders.

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-2.7(a)4 provide that the 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 law enforcement, fire fighter or correction officer and

¹ The instructions stated, “List all present employer(s) first, including part-time and self-employment. Then, in reverse chronological order, list all previous employment, beginning with the most recent past employment back to the age of 18. OMIT NONE.”

other titles as determined by the Commission. *N.J.A.C.* 4A:4-2.7(a)11 provides that the eligible's name may be removed from an eligible list for other valid reasons.

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 removal of 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. *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.

Initially, the appellant requests that the appointing authority's response not be considered. However, for the Commission to make a reasoned decision in the matter, the Commission must review a complete record. When it disposed of the certification, the appointing authority provided the Commission representative with copies of materials. The appellant has the burden of proof to show by a preponderance of the evidence that the appointing authority's decision to remove his name from an eligible list was an error. It must be recognized that, in appeals involving the removal of an eligible's name from a list, the Division of Agency Services has already determined that there are sufficient grounds to remove the individual's name from the list since it has recorded the certification as disposed and advised the eligible of appeal rights to the Commission. *See N.J.A.C.* 4A:4-4.7(c). Further, *N.J.A.C.* 4A:4-4.7(b)2 does not mandate restoration of an individual's name to the list and to simply restore an eligible's name to list if the underlying merits in the record otherwise support the removal is contrary to Civil Service law and rules. Therefore, it is appropriate for the Commission to review the appointing authority's response to the appellant's appeal submission.

In the matter at hand, the record demonstrates that there is ample evidence to support the removal of the appellant's name from the subject list. The record evidences that the appellant was arrested on four occasions, the last which occurred in August 2012, but the charges were dismissed. Further, the 2007 and 2005 charges were dismissed after the appellant completed two different diversionary programs. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Although the appellant's arrest was for a disorderly persons offenses and cannot give rise to the disability arising under *N.J.A.C.* 4A:4-4.7(a)4, the fact that the appellant was involved in such activity reflects upon her character and her ability to perform the duties of the position at issue. *See In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002). In this case, according to the police investigation report submitted by the appointing authority, on August 15, 2012, little more than three years prior to the closing date for the

subject examination, the appellant admitted into forcing her way into the residence of her ex-husband and punching him in the mouth, which resulted in her being arrested. The appellant also admitted throwing eggs at a home she shared with a roommate because of an argument in 2007 for which she was charged with criminal mischief. Further, she was charged with simple assault in 2004 because of an argument and was arrested for shoplifting in 2004 for which she completed a diversionary program.

It is noted that the removal of eligible from Fire Fighter lists on the basis of an adverse background have been upheld. *See In the Matter of James Alessio* (MSB, decided March 9, 1999). In that case, the eligible attempted to deceive the appointing authority in regard to his three prior arrests and the actual reason supporting his separation from the Postal Service, *i.e.*, his 1992 conviction for a federal offense which was committed during this employment. In *Alessio, supra*, it was concluded that such disregard is unacceptable in a Fire Fighter who operates in the context of a paramilitary organization in which the ability to follow orders is crucial to saving lives. *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998) was relied upon in that matter, in which the Supreme Court stated:

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.

In this case, in addition to her four arrests, the appointing authority provided indicated that the appellant was named as a suspect in a number of investigations, that she had a TRO filed against her, that her name was removed from consideration for a Police Officer position, and that she failed to provide a complete listing of all her previous residences. Clearly, these adverse incidents occurring shortly before consideration for the position are relevant to the position sought, as such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Fire Fighter. While the appellant argues that these are essentially minor issues for which she has an explanation, occurred years in the past and she has since matured, they reveal a pattern of inconsistent behavior and provides further evidence of the appellant's poor judgment. As noted above, the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. Accordingly, given the totality of her background, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M1544T), Jersey City 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 6th DAY OF JUNE, 2018



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