



**STATE OF NEW JERSEY**

In the Matter of James O’Loughlin,  
Fire Fighter (M1540T), Irvington

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

CSC Docket No. 2018-2912

List Removal Appeal

**ISSUED: AUGUST 17, 2018 (SLK)**

James O’Loughlin appeals his removal from the eligible list for Fire Fighter (M1540T), Irvington on the basis that he possessed an unsatisfactory driving record.

The appellant took the open competitive examination for Fire Fighter (M1540T), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory driving history.

On appeal, the appellant states that his driver’s abstract demonstrates that he has not received more than two points on his driving record in the last five years. He acknowledges that he made some driving mistakes in the past, but presents that he completed a defensive driving class in September 2016 and now understands the importance of driver safety.

Although given the opportunity, the appointing authority did not respond to the appellant’s appeal.

**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).

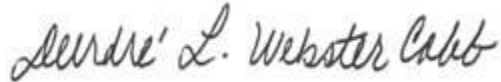
In the instant matter, as the appointing authority has not responded to the appeal, it has not demonstrated that possession of a driver's license is an essential function of the job in its jurisdiction. Therefore, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list.

## ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the Fire Fighter (M1540T), Irvington eligible list, for prospective employment opportunities only.

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 15<sup>th</sup> DAY OF AUGUST, 2018



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals  
& Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: James O'Loughlin  
Tony Vauss  
Kelly Glenn