



STATE OF NEW JERSEY

In the Matter of Corey Henry, Sr.,
Police Officer (S9999U), Plainfield

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

CSC Docket No. 2019-661

List Removal Appeal

ISSUED: February 8, 2019 (SLK)

Corey Henry, Sr. appeals his removal from the eligible list for Police Officer (S9999U), Plainfield on the basis that he did not meet the age requirements.

The appellant took the open competitive examination for Police Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant did not meet the age requirements. Specifically, the appointing authority’s background report indicates that the appellant was born on July 17, 1980, which means that the appellant was 36 years old as of the August 31, 2016 closing date.

On appeal, the appellant acknowledges that he was older than 35 years old as of the closing date for the subject examination. However, the appellant presents that he is currently a Fire Fighter for the appointing authority, a member of the Police and Firemen’s Retirement System (PFRS) and an Auxiliary Police Officer for the Plainfield Police Department. Based on this background, the appellant is requesting a rule relaxation so that he could be appointed as a Police Officer. He highlights that to become an Auxiliary Police Officer, he had to complete a 12-week Basic Auxiliary training program conducted by the Union County Police Academy in cooperation with the Union County Prosecutor’s Office. The appellant indicates that Auxiliary Police Officers have full police powers when working, are considered peace officers, and he lists the many duties for an Auxiliary Police Officer. The appellant argues that in 2009, the State of New Jersey Legislature 212 session established an “Auxiliary Law

Enforcement Officers' Act." He states that under this "Act", the time a person has served as an auxiliary law enforcement officer may be applied against the age restriction when the officer is chosen to fill a permanent vacancy.

Additionally, the appellant cites *In the Matter of Julio Cordero, Jr.* (MSB, decided January 17, 2007) where Cordero, who was over the age of 35 at the time of the announced closing date for the law enforcement examination, was restored to the list on equitable grounds in support of his appeal. The appellant indicates that Cordero resigned from his long-term employment with the United States Postal Service relying to his detriment on the appointing authority's offer of employment. The appellant also states that Cordero entered the Police Academy prior to being removed from the list and the appointing authority supported Cordero's appeal to be restored to the list. The appellant believes that his case is similar since he has been working for the appointing authority as a Fire Fighter since 2007 and is already enrolled in PFRS. Additionally, he claims that he was never advised by the appointing authority or the Civil Service Commission (Commission) that there would be obstacles to his appointment or membership with PFRS, where is he a current member.

Although given the opportunity, the appointing authority has not responded to this appeal.

CONCLUSION

N.J.S.A. 40A:14-127 and *N.J.A.C.* 4A:4-2.3(b)2i provide, in pertinent part, that a Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Further, *N.J.S.A.* 40A:14-127, *N.J.S.A.* 40A:14-127.1 and *N.J.A.C.* 4A:4-2.3(b)2 provide, in pertinent part, for certain adjustments in the calculation of one's age for the purposes of meeting the age requirement to take the open competitive examination for a position as a Municipal Police Officer based on prior service as a Municipal Police Officer, State Trooper, New Jersey Transit Police Officer, Camden County Park Police Officer, Burlington County Bridge Commission Police Officer, Educational Enforcement Officer, County Police Officer, SEPTA Police Officer, Delaware River Port Authority Police Officer, Sheriff's Officer, AMTRAK Police Officer, or any persons who were previously employed by any State or Federal law enforcement agency or other public entity and who performed duties comparable to the law enforcement duties performed in the position specifically listed in *N.J.S.A.* 40A:14-127.1 or military service.

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 appointing authority had a valid reason for removing the appellant's name from the list as he was not under the age of 35 at the time of the subject law enforcement examination. While the appellant requests that his name be restored to list based on his service as an Auxiliary Police Officer, an Auxiliary Police Officer is not one of the law enforcement titles that can be used to recalculate one's age under *N.J.S.A. 40A:14-127.1* and mere membership in PFRS is not a substitute for the required age threshold. Additionally, this matter is distinguishable from *Cordero, supra*, and there are no grounds for equitable consideration. Specifically, Cordero resigned from a position based on an offer of employment. In this case, the appointing authority never made any offer of employment,¹ nor has the appellant resigned for any position due to the appointing authority's actions. Therefore, there is no detrimental reliance by the appellant. Additionally, he has not presented any appointing authority support for his appeal. Concerning the purported Auxiliary Law Enforcement Officers' Act, the appellant has not cited a specific statute that demonstrates that this bill became a law and the Commission has not uncovered evidence of such. Finally, concerning the appellant's comments that he did not receive prior notice from the appointing authority or the Commission that his age would make him ineligible for appointment as a Municipal Police Officer, candidates were instructed on the subject announcement, "Before proceeding, you **MUST** [click here](#) and read the 2016 Law Enforcement Examination (LEE) Fact Sheet," prior to accessing the online application. The 2016 Law Enforcement Examination Fact Sheet informed candidates, under the section, "Maximum Hiring Age Requirement for Municipal Police Officer Positions," "when applicants for Municipal Police Officer titles (including Bilingual positions) reach the day of their 35th birthday on or before the August 31, 2016 closing date, they are considered to be over 35 years of age and are not eligible for appointment to the title . . ." Additionally, the Fact Sheet identifies which titles may be used to recalculate one's age. Further, this information was also addressed in the 2016 LEE Administration Guide.

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 Police Officer (S9999U), Plainfield eligible list.

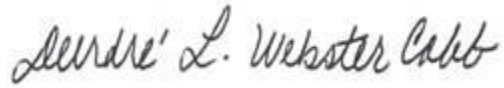
ORDER

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.

¹ It is noted that even if the appellant's name was restored to the list, his appointment would not be mandated as the only interest afforded an eligible on a list is consideration for employment during the duration of the list. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 6th DAY OF FEBRUARY, 2019



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