



STATE OF NEW JERSEY

In the Matter of Steven Crespo, Fire
Fighter (M1539T), Hoboken

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

CSC Docket No. 2018-3002

List Removal Appeal

ISSUED: APRIL 18, 2019 (CSM)

Steven Crespo appeals the appointing authority’s request to remove his name from the eligible list for Fire Fighter (M1539T), Hoboken, on the basis of his unsatisfactory criminal record.

In disposing of the September 29, 2017 certification, the appointing authority requested the removal of the appellant’s name, contending that he had an unsatisfactory criminal background. Specifically, the appointing authority presented that the appellant was arrested on November 13, 2006 for distribution of marijuana and distribution of marijuana in a school zone and adjudicated as delinquent for the distribution of marijuana charge. On December 6, 2007, the appellant was charged with possession of CDS marijuana, use and possession of drug paraphernalia, CDS on School property and manufacture and distribution of a CDS. The appellant was indicted and charged with third degree distribution of cocaine to an undercover agent, third degree distribution of cocaine in a school zone, and third-degree possession of cocaine. The appellant pled guilty to the third-degree distribution of cocaine charge and sentenced to two years of probation. The appointing authority also indicated that on June 20, 2008, the appellant was arrested for possession of marijuana which was amended to a violation of a local ordinance and resulted in a guilty plea.

On appeal, the appellant states that he was upfront with the investigator about his background and he has spent the last decade trying to better himself. The appellant provides six letters of reference from his peers and Hoboken residents in support of his appeal. Therefore, the appellant requests that his name be restored to the subject list.

In response, the appointing authority, represented by Scott DeRosa, Assistant Corporation Counsel, maintains that the appellant's criminal record adversely relates to employment as a Fire Fighter. Applying the criteria set forth in *N.J.S.A. 11A:4-11*, it states that the appellant was charged with three separate drug offenses over a period of three years. The appointing authority emphasizes that two of those offenses related to distribution of cocaine and marijuana. Further, the first incident did not deter the appellant from violating the law one year later, when he was charged and found guilty of distribution of cocaine to an undercover agent and served two years of probation. The appointing authority asserts that the appellant continued to violate the law, as he was charged with possession of marijuana while he was still on probation, which was amended to a local ordinance violation to which he pled guilty. It also notes that the appellant was the principal actor in all the offenses and they all occurred between the ages of 17 and 19. The appointing authority argues that the crime was not an isolated event, as he was arrested on three separate occasions during a period of three years. Additionally, the appellant did not provide any evidence of rehabilitation, such as participation in an out-patient or in-patient program, underwent counseling, or performed volunteer or community service. Therefore, the appointing authority maintains that it properly requested removal of the appellant's name from the subject list.

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 shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from an 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).

In the matter at hand, the record demonstrates that there was a sufficient basis for the appointing authority to remove the appellant's name from the list. It cannot be ignored that the appellant was arrested three times, once while he was on probation, for serious offenses. It is noted that the removal of eligibles 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.

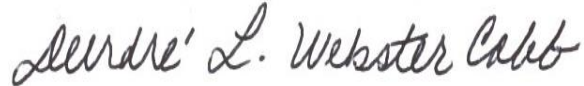
In this case, the appellant has not explained the circumstances under which the crimes were committed, and they were not isolated events. Moreover, little more than six years passed since he was sentenced to two years of probation in January 2009 and when the examination closed in August 2015. Given that the appellant has not documented or explained any evidence of rehabilitation, not enough time had passed since the order of probation and the closing date that would warrant consideration of restoring his name to the list. While the appellant argues that he has since matured, his actions reveal a pattern of disregard for the law and provide 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. Regardless, the subject list expired in March 2019 and a review of the certification indicates that the appellant's name could have been bypassed. Accordingly, given the totality of his background, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M1539T), Hoboken.

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
17TH DAY OF APRIL, 2019



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