



STATE OF NEW JERSEY

In the Matter of Albert Gonzalez, Jr.,
Fire Fighter (M1844W), Jersey City

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

CSC Docket No. 2022-831

Reconsideration

ISSUED: FEBRUARY 7, 2022 (SLK)

Albert Gonzalez, Jr., represented by Marc A. Calello, requests reconsideration of *In the Matter of Albert Gonzalez, Jr.* (CSC, decided September 22, 2021) where the Civil Service Commission (Commission) denied his appeal to remove his name from the Fire Fighter (M1844W), Jersey City eligible list on the basis of an unsatisfactory background report.

By way of background, Gonzalez’s name was removed from the Fire Fighter (M2554M), Jersey City, eligible list on the basis of an unsatisfactory background report. Specifically, the background report indicated Gonzalez had been removed as a Jersey City Police Officer effective November 10, 2009, for conduct unbecoming a public employee and violating various departmental rules regarding a stabbing incident that took place before he entered the Police Academy. Although the indictment against Gonzalez was dismissed and his record expunged, the administrative charges against him were sustained and he did not appeal his removal to the Commission. Additionally, in August 2010, Gonzalez was arrested by the Point Pleasant Beach Police for impersonating an officer, which led to him pleading guilty to an amended charge of disorderly conduct and paying a fine. Moreover, he was terminated from Amazon in October 2017, which was less than one year prior the August 31, 2018, subject examination closing date. Gonzalez requested an opportunity for a hearing to explain his past actions, employment, circumstances, and how he was qualified to have a symbiotic relationship with local police as well as citizens and asserted that paper documentation did not provide an accurate and fair picture of him. However, the Commission found that Gonzalez had an opportunity for a hearing in 2009 but failed to exercise his rights in the allotted time, his request

was devoid of merit and the matter was to be determined based on the written record. Further, based on the record, it denied his appeal.

In his request for reconsideration, Gonzalez reiterates his request that this matter be transmitted to the Office of Administrative Law for a hearing. He states that he does not want to “reconsider” the Commission’s September 22, 2021, decision as it has made its decision. Instead, Gonzalez requests to present testimony to a neutral tribunal. Regarding his termination as a Jersey City Police Officer, in reviewing the September 22, 2021 decision, he states that the foremost reason he removed was for concealing information from supervisors. Gonzalez presents that the alleged “concealed” information was that he was asked if he knew who stabbed the victim and he responded “no.” He asserts that this information that was the basis for his removal from the subject list is new information to him. Gonzalez states that the Commission did not identify the “concealed information,” which he contends leads to doubting the severity of the conclusion. According to the decision, the “concealing information” issue was the “cornerstone” of the Commission’s prior decision. Gonzalez argues that the inquiry as to what he knew or did not know was clearly conjuncture rather than fact. He states that it is well known that a declarant cannot reach into the mind of another and “know” what he or she means. Therefore, Gonzalez asserts that a hearing would obviate the need to go back and forth as to what was said, who said it and what was meant by it.

Concerning the description of the reasons for Gonzalez’s removal in 2009, he states that the Commission’s decision cited information from the Police Department’s “senior executive team” that they believed it knew. However, he states that this information did not come from him. Gonzalez believes that this information must have come from third parties who were not named in any of the discovery provided to him. He claims that this is just one example of what can be considered new information not otherwise disclosed. Gonzalez reiterates his argument that he has a right to make clear exactly what was said, to whom and what was meant by what was said. Otherwise, the truth surrounding the “cornerstone” of the Commission’s decision is meaningless.

Referring to “gang” related hand signs, Gonzalez states that a careful look at the photos reveals that he was signing a 201 area code with one gesture and a 305 area code with another. He explains that the gestures were to honor Jersey City, which is where he is a resident, and his grandmother, who lives in Miami. Gonzalez states that the Jersey City gang unit confirmed that his use of the “ring finger” in the 201 gesture is not a “Bloods” gesture which utilizes the middle finger.

Gonzalez argues that there is a deep factual dispute regarding the “cornerstone” rationale for his termination, which alone can be enough for a hearing. Gonzalez asserts that this case was not handled in a manner honoring Civil Service law and rules. For example, he presents that the Commission’s decision indicated

that expunged records can be grounds to remove a candidate from a Fire Fighter eligible list if the arrest adversely related to the position sought. Gonzalez states that he was wrongfully accused and had an arrest expunged and not a conviction, which involved an arrest that should have never happened that took away his livelihood. He argues that if an event never happened than how can it adversely relate to the position sought. Gonzalez indicates that he has a private investigator who is interviewing the officers in Point Pleasant to show the difference of the use of a verb cost him a summons and a disorderly conduct municipal ordinance plea. He contends this new information will shed great light on his eligibility as well. He further argues that *N.J.A.C. 4A:2-1.1(d)* and *N.J.A.C. 4A:8 et seq.*, provide avenues for the granting of hearings.

In response, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, states that, for practical purposes, Gonzalez is asking for reconsideration. It asserts that this is his third bite at the apple, and he should not be granted reconsideration merely because he is unhappy with the Commission's decision. Regarding the prongs for reconsideration, the appointing authority contends that even if Gonzalez's private investigator is in the process of obtaining "new information," his argument is devoid of any explanation as to the reason the "new evidence" was not presented to the Commission during the initial evaluation of his appeal, which is a requirement to satisfy the grounds for reconsideration on this basis. Regardless, the appointing authority notes that the Point Pleasant arrest occurred over 11 years, and, therefore, it states that whatever information the private investigator may obtain can hardly be considered new. Therefore, it argues that Gonzalez has failed to meet the "new evidence" prong for reconsideration.

Concerning the "clear material error" prong, the appointing authority reiterates that Gonzalez was required to appeal his removal in 2009 within 20 days and he failed to do so. As such, it asserts that there is no basis to relitigate this issue and there was no "clear material error." Referring to the rules Gonzalez cites for the basis for his request for a hearing, *N.J.A.C. 4A:2-1.1(d)* and *N.J.A.C. 4A:8 et seq.*, the appointing authority states that Chapter 2; Subchapter 2 of Title 4A only applies to permanent employees in the career service or employees in their working test period, and he is neither. Additionally, Chapter 8 of Title 4A only applies to layoffs and this matter is a list removal. Referring to Gonzalez's comments about expungements, it presents that under current statutory and case law, the Commission correctly indicated that expunged record can be used to remove candidates from Firefighter eligible lists. Moreover, the appointing authority reiterates that his discipline with the Jersey City Police Department, and other issues, including but not limited to his arrest, provide ample evidence that he is not fit to be Jersey City Firefighter.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

N.J.A.C. 4A:2-1.1(d) provides that except where a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record.

Initially, it is noted that there is no law that requires a hearing in this matter and neither Chapter 2 nor Chapter 8¹ of Title 4A require a hearing in this matter. Further, as the Commission previously denied Gonzalez's request for a hearing in the prior decision, this matter is a request for reconsideration even if he contends that he is not asking for reconsideration.

In this matter, Gonzalez failed to meet the standard for reconsideration as a he has not presented new evidence that would change the outcome² and he has not demonstrated that a clear material error occurred. Specifically, the only material facts in this case are that Gonzalez was removed as a Jersey City Police Officer in November 2009 and he chose not to exercise to his right to appeal his discipline to the Commission within 20 days, he was arrested for impersonating a Police Officer in 2010, which led to him pleading guilty to an amended charge of disorderly conduct and paying a fine, and he was terminated from Amazon less than one year prior to the subject examination closing date. Therefore, Gonzalez clearly has an unsatisfactory background to be a Fire Fighter. Whatever "new" evidence that Gonzalez could present at a hearing regarding his claims that his removal and arrest were unjustified is immaterial as he had the opportunity to make these arguments in 2009 and 2010 respectively, but chose not to do so. Instead, he failed to appeal his removal to the Commission within 20 days as required and he accepted a guilty plea to a lesser offense instead of pleading not guilty. Therefore, the Commission will not relitigate these issues that are over a decade old. Additionally, even without

¹ As Chapter 8 of Title 4A refers to layoffs, and this matter is a list removal appeal, Gonzalez's citation to *N.J.A.C.* 4A:8 *et seq.* is misplaced.

² Even if Gonzalez had presented new evidence that could change the outcome, he also fails to meet the standard for the first prong for reconsideration as he failed to explain why the new evidence was not presented at the initial proceeding.

considering the expunged criminal record concerning the stabbing incident, which the Commission can as indicted in the prior decision, the record indicates that Gonzalez was removed from his position as a Jersey City Police Officer based on sustained administrative charges, which he did not appeal. Therefore, his removal must be accepted as justified in determining this matter regardless of his current claims of “new” evidence. Accordingly, as there are no material and controlling facts in dispute, there is no basis for a hearing in this matter and his request is denied.

ORDER

Therefore, it is ordered that this request 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 2ND DAY OF FEBRUARY 2022

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