



STATE OF NEW JERSEY

In the Matter of Daniel Gomes, Fire  
Fighter (M1848W), Linden

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-1282

List Removal Appeal

ISSUED: JUNE 20, 2022 (HS)

Daniel Gomes appeals the removal of his name from the eligible list for Fire Fighter (M1848W), Linden on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open competitive examination for Fire Fighter (M1848W), which had a closing date of August 31, 2018. The resulting eligible list promulgated on March 29, 2019 and expires on March 28, 2023.<sup>1</sup> The appellant's name was certified to the appointing authority on October 7, 2020. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority indicated that the appellant was arrested on June 25, 2017 and ultimately found guilty on charges of possession of 50 grams or less of marijuana, *N.J.S.A. 2C:35-10(a)(4)*; obstruction, *N.J.S.A. 2C:29-1(a)*; and resisting arrest, *N.J.S.A. 2C:29-2(a)(1)*, all disorderly persons offenses. On November 18, 2017, the appellant was arrested and charged with possession of 50 grams or less of marijuana, *N.J.S.A. 2C:35-10(a)(4)*; obstruction, *N.J.S.A. 2C:29-1(a)*; and possession of drug paraphernalia, *N.J.S.A. 2C:36-2*, all disorderly persons offenses. On July 11, 2018, the appellant was arrested and charged with domestic violence simple assault, *N.J.S.A. 2C:12-1(a)*, and served with a temporary restraining order following an incident involving his mother. Additionally, the appellant's driver license was suspended.<sup>2</sup>

<sup>1</sup> The list was extended one year to March 28, 2023.

<sup>2</sup> The appellant was an adult at all relevant times.

On appeal to the Civil Service Commission (Commission), the appellant maintains that he was completely innocent in the June 2017 incident and has fought to appeal the disposition. Concerning the November 2017 incident, the appellant claims that the charges were dismissed for lack of prosecution and presents, as evidence of such disposition, a notice from the municipal court stating that “the court matter(s) . . . has been scheduled for” December 4, 2018. Concerning the July 2018 incident, the appellant acknowledges that his mother was granted a restraining order and that he was forced to live with his aunt and uncle for nearly six months. However, the appellant maintains that he was acting in self-defense. He also states that his mother dropped the restraining order and did not pursue any charges of simple assault, which left the court with no choice but to dismiss the matter, at which time the appellant returned home. The appellant maintains that he has since been living peacefully with his mother.

Despite the opportunity, the appointing authority did not submit any further arguments.

### 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 that includes a conviction for a crime that 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 of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, correctional police officer, juvenile detention officer, firefighter, or judiciary titles, and other titles as the Chairperson or designee may determine. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate’s removal from a Police Officer 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).

Additionally, although an eligible’s arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C.* 4A:4-4.7(a)4, the fact that an eligible was involved in such activity may reflect upon the eligible’s character and 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) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible

list). Here, as the appellant was arrested for disorderly persons offenses, the offenses did not rise to the level of crimes. Nevertheless, the appellant's arrests could still be considered in light of the factors noted in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine whether it adversely related to the employment sought.

*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 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. *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 name from an eligible list was in error.

In this matter, the record indicates that the appellant was arrested in June 2017 and ultimately found guilty on charges of possession of 50 grams or less of marijuana, obstruction, and resisting arrest. In November 2017, the appellant was arrested and charged with possession of 50 grams or less of marijuana, obstruction, and possession of drug paraphernalia. In July 2018, the appellant was arrested and charged with domestic violence simple assault and served with a temporary restraining order. The appellant was an adult at the time of these multiple incidents, which all occurred within only approximately one year and two months of the August 2018 examination closing date. The appellant's arguments as to why these incidents should not be considered are not persuasive. Specifically, although the appellant maintains his innocence in the June 2017 incident and states that he has fought to appeal the disposition, there is no evidence in the record that the disposition was overturned. With respect to the November 2017 incident, the appellant claims that the charges were dismissed for lack of prosecution. However, he does not provide substantive evidence of such disposition and only provides a scheduling notice. Concerning the July 2018 incident, notwithstanding the appellant's claim of self-defense, there is no dispute that the appellant's mother was granted a restraining order against him. It is noted that the removal of eligibles from Fire Fighter lists on the basis of an adverse background has 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 regarding 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 *Karins*, 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.

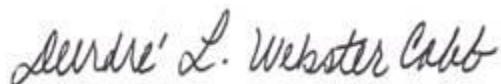
In this case, the appellant's arrests are relevant to the position sought as these events are indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Fire Fighter. Particularly problematic are the appellant's convictions for obstruction and resisting arrest, in light of the requirement, per *Karins, supra*, that a Fire Fighter be able to maintain an "excellent working relationship" with Police Officers given the "almost symbiotic relationship [that] exists between the fire and police departments at a fire." The Commission is mindful that the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. Accordingly, the appointing authority has presented sufficient cause to remove the appellant's name from the subject eligible list, and the appellant has failed to meet his burden of proof in this matter. In light of the foregoing, the Commission need not address the appellant's driver's license suspension.

### 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 15<sup>TH</sup> DAY OF JUNE 2022




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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Daniel Gomes

Joseph C. Bodek  
Division of Agency Services