



STATE OF NEW JERSEY

In the Matter of M.M.,
Fire Fighter (M1838W),
Irvington

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-1161

List Removal Appeal

ISSUED: JUNE 20, 2022 (JET)

M.M., represented by Alan Genitempo, Esq., appeals the removal of his name from the Fire Fighter (M1838W), Irvington, eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Fire Fighter (M1838W),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified to the appointing authority on September 18, 2020 (OL200728 certification). In disposing of the certification, the appointing authority requested the removal of the appellant’s name from the eligible list on the basis of an unsatisfactory criminal record. Specifically, the record reflects that on July 6, 2011, the appellant was arrested as a juvenile in Belleville and charged with Possession of a Weapon in violation of *N.J.S.A. 2C:39-5* and with Trespassing on School Property in violation of *N.J.S.A. 2C:18-3B*, for which he was found guilty and completed a diversionary program. The record also indicates that on March 13, 2012, the appellant was arrested in Harding and charged with Obstructing the Administration of Law or Other Governmental Function in violation of *N.J.S.A. 2C:29-1A*, for which he completed a diversionary program. The record also indicates that on March 28, 2013, the appellant was arrested in Newark and charged with Loitering in a Public Place to obtain a CDS in violation of *N.J.S.A. 2C:33-2.1* for which he was found guilty, Possession of Certain Prescription Drugs in violation of *N.J.S.A. 2C:35-24* (dismissed), and Use or Possession with Intent to Use Drug Paraphernalia in violation of *N.J.S.A. 2C:36-2* (dismissed). The record also

¹ The subject list expired on March 28, 2021.

indicates that on January 17, 2016, the appellant was arrested in Newark and charged with Possession of a Controlled Dangerous Substance (CDS) in violation of *N.J.S.A. 2C:35-10A(1)* (dismissed), Distribution of a CDS in violation of *N.J.S.A. 2C:35-5A(1)* (dismissed), Possession with Intent to Distribute within 500 feet of Public Property (dismissed) in violation of *N.J.S.A. 2C:35-7.1(A)*, Possession of a CDS Schedule I, II, III, IV in violation of *N.J.S.A. 2C:35-10A* (dismissed), and Failure to Provide CDS to Police in violation of *N.J.S.A. 2C:35-10C* (dismissed).

On appeal, the appellant asserts that he obtained an October 2, 2020 expungement order with respect to the above listed offenses, and he states that he has not been involved with any other violations since the time the last incident occurred in 2016. The appellant states that, since his record has been expunged, he should not have been removed from the eligible list. Moreover, the appellant requests a hearing to determine if he should be restored to the list.

Despite being provided with the opportunity, the appointing authority did not provide a response.

CONCLUSION

Initially, the appellant requests a hearing in this matter. List removal, appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Civil Service Commission (Commission) determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented in this matter which would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978). The Commission is satisfied that the instant record is sufficient to issue a decision in this matter.

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C. 4A:4-4.7(a)4*, provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. *See Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine whether the appellant's criminal history adversely relate to the position of Fire Fighter. 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 a Police Officer employment 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, supra*. Further, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement." See *N.J.S.A. 2C:52-3* and *N.J.S.A. 2C:52-8*.

Further, it is well established that municipal police departments may maintain record pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). *N.J.S.A. 2A:4A:-48* provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision.

Additionally, *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 an appointment. Moreover, pursuant to *N.J.S.A. 2C:36A-1*, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall

be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. *See State v. Marzolf*, 79 N.J. 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's arrest and Conditional Discharge could still properly be considered in removing her name from the subject eligible list.

In this matter, the record reflects that the appellant was arrested as a juvenile in 2011, 2012 and in 2013, and he was arrested as an adult in 2016 and charged with the above listed offenses. Although the 2011, 2012 and 2013 incidents occurred when the appellant was a juvenile, the appointing authority could consider the incident as a part of its background check pursuant to the above listed rules in order to determine the appellant's suitability for employment. It cannot be ignored that the appellant was an adult at the time of the 2016 incident, and a little more than two and a half years had elapsed since the time he applied for the subject examination, and only a little more than four years had passed since the time his name was certified, which is not sufficient to establish that he had been rehabilitated. In this regard, while his records have been expunged, the incidents were not isolated, as the appellant was involved in multiple juvenile offenses and an infraction as an adult. The appellant does not provide any information to explain his involvement in the incidents, nor does he dispute that he was arrested on those occasions. Moreover, it is noted that the removal of eligibles from Fire Fighter lists on the basis of adverse criminal records have been upheld. *See In the Matter of James Alessio* (MSB, decided March 9, 1999). Moreover, the appellant's completion of diversionary programs for the juvenile arrests does not overcome that the appointing authority properly removed him from the list, as he was involved in an additional infraction as an adult. Notwithstanding the expungements, the appellant's involvement in the 2016 arrest shows that he is not currently suitable for appointment as a Fire Fighter. In *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998) 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.

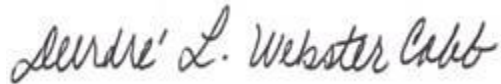
In this matter, the appellant's adverse background information pertaining to the multiple arrests and charges against him, and based on the seriousness of the infractions, are relevant to the position sought, as such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Fire Fighter. As noted above, 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 Fire Fighter (M1840W), Township of Irvington eligible list. It is noted that with the further passage of time and no additional adverse incidents, the appellant's criminal record and background will not be sufficient cause for removal from subsequent public safety lists.

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 15TH DAY OF JUNE 2022



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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