



**STATE OF NEW JERSEY**

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

In the Matter of Christian Herr, Fire  
Fighter (M1856W), Newark

List Removal

CSC Docket No. 2023-1212

**ISSUED: September 20, 2023 (EG)**

Christian Herr, represent by Craig S. Gumpel, Esq., appeals the decision of Newark to remove his name from the eligible list for Fire Fighter (M1856W), Newark based on falsification of his preemployment application.

The subject eligible list (M1856W) promulgated on March 29, 2019, and expired on April 19, 2023. The appellant’s name appeared on the October 25, 2021, certification of the eligible list. He was in the 40<sup>th</sup> position on the certification. In disposing of the certification, the appointing authority requested that the appellant’s name be removed on the basis of falsification of his preemployment application. In support of its decision, the appointing authority provided a copy of its background investigation report of the appellant, documentation regarding his arrests, and selected pages of the appellant’s preemployment application. The information revealed that the appellant was arrested on March 8, 2003, for possession/consumption of alcohol under the legal age. The appellant pled guilty and was fined \$348. On August 6, 2004, he was arrested for possession of marijuana. This charge was later dismissed. The appellant was arrested again on July 20, 2005, for possession/consumption of alcohol under the legal age. The charge was amended to a city ordinance disturbance, and the appellant pled guilty and paid a fine. The appellant’s final arrest occurred on August 18, 2006, for public intoxication and disorderly conduct. He pled guilty to both counts and paid a fine. The appointing authority indicated that the appellant falsified his application when he didn’t properly answer question #31 by failing to list his arrests in 2003, 2004, 2005 and

2006. Additionally, it asserted that he failed to list his arrests in 2003 and 2004 in response to question #33. Further, the appointing authority contends that in response to question #34, the appellant failed to list his 2006 arrest.

On appeal to the Civil Service Commission (Commission), the appellant argues that he didn't falsify or try to deceive on his application as he listed all his arrests on his application and tried to answer the questions to the best of his ability. In response to question #31, the appellant asserts that he answered "no" because the question asked if he was ever required to testify before any investigative body, and he was never required to testify for any of his arrests. He adds that he just received citations for three of the incidents and that the charges were dropped in the other incident. Additionally, he argues that he answered question #33 properly as the question asked to list arrests for disorderly persons and he listed the two incidents, the 2005 and 2006 arrests, where he had been charged with a disorderly persons offense. He asserts that the 2003 and 2004 arrests were not for disorderly persons offenses. Question #34 asked for any arrests, indictments or convictions for any violation of criminal law. The appellant only listed his 2003 and 2004 arrests as those involved violations of criminal law.

The appellant also explained the circumstances of his arrests. The 2003 arrest was when he was on his way to a hockey game and had some alcohol on him while being only 18 at the time. With regard to the 2004 arrest, the appellant explained that he was driving a car with two friends as passengers through Maryland. He was pulled over because the police officer could not read the license plate. The officer then asked to search the vehicle to which the appellant consented. The appellant claims that unknown to him one of the passengers had brought marijuana, which was found in the search. When no one claimed knowledge of the marijuana, all three people in the car were charged with possession. The charges were later dropped. Further, the appellant explained that the 2006 incident occurred when he was at a party and decided to go walk to meet his ride. A police officer approached him and smelled alcohol on his breath. He was 20 years old at the time and was charged with public intoxication and disorderly conduct. The appellant argues that all of these incidents occurred between the ages of 18 and 21 and that he has not had any further incidents since 2006. Since this time, he has been a productive worker and has volunteered for many charitable and social functions. The appellant submits several letters of reference that attest to his character.

The appellant requests that his name be restored to the eligible list and that he be immediately appointed with retroactive seniority, backpay and benefits. The appellant also argues that since the appointing authority had no legitimate reason to remove his name, his attorney's fees and costs should be paid by the appointing authority.

The appointing authority did not provide any additional arguments or evidence for the Commission to review on appeal.

## CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the removal of an individual from an eligible list who has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

Additionally, *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 employment 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, *inter alia*, correction officer titles. 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).

A thorough review of the record indicates that the appellant's removal from the (M1856W) eligible list for Fire Fighter is not warranted. The record indicates that the appellant's arrests occurred while the appellant was between the ages of 18 and 21, and that his last arrest occurred in 2006 approximately 16 years prior to the subject certification. The appellant has also provided evidence of rehabilitation highlighting his employment and volunteer efforts. The Commission is mindful of the high standards that are placed upon Fire Fighter candidates and personnel, and their need to follow laws and work with law enforcement. Fire Fighters 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. See *Karins v. City of Atlantic City*, 152 *N.J.* 532, 552 (1998). However, taking into consideration that the appellant's arrests occurred while he was young, the last incident occurred in 2006, and the totality of the evidence in the record, including gainful employment and volunteer

activities since his last arrest, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record.

Additionally, the Commission does not agree that the appellant falsified his application. In this regard, the appointing authority claims that the appellant falsified his application because he failed to list all of his arrests each time in response to questions #31, #33 and #34. However, a review of the application reveals that the appellant listed all his arrests in the course of answering all of the questions on his application. It is clear that the appellant disclosed all four of his arrests and he did not omit or falsify any material information. He merely reasonably interpreted what each individual question was asking for differently than the appointing authority. Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Fire Fighter (M1856W), Newark.

The appellant has requested that his name be restored to the eligible list and that he be immediately appointed with retroactive seniority, backpay and benefits, and counsel fees. However, the Commission notes that the appellant did not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Further, the Commission generally does not award counsel fees in written record appeal matters absent a showing of bad faith or invidious motivation on an appointing authority's part. *See generally N.J.A.C. 4A:2-1.5(b)*. No such showing has been made in this matter as there is no evidence that the appointing authority removed the appellant from the list for any reason other than its legitimate concerns with his background, and its interpretation, albeit incorrect, of how he completed his application. Therefore, the only remedy being provided to the appellant is that the Fire Fighter (M1856W), Newark eligible list be revived so that the appellant's name may be certified at the time of the next certification, for prospective employment opportunities only.

### **ORDER**

Therefore, it is ordered that the appellant's appeal of the removal of his name from the list for Fire Fighter (M1856W), Newark be granted, and the list be revived so that the appellant's name may be certified at the time of the next certification, for prospective employment opportunities only. No other remedies are provided.

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 20<sup>TH</sup> DAY OF SEPTEMBER, 2023

*Allison Chris Myers*

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