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STATE OF NEW JERSEY

In the Matter of Robert Dawkins,
Correction Officer Recruit (S9988T),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-808

List Removal Appeal

ISSUED: MAR 17 2017 (CSM)

Robert Dawkins appeals the appointing authority's request to remove his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections, on the basis of an unsatisfactory criminal record, an unsatisfactory background report and falsification of his employment application.

In disposing of the certification from the subject list, the appointing authority requested the removal of the appellant's name, contending that the appellant had an unsatisfactory criminal history, an unsatisfactory background report and that he falsified his employment application. Specifically, the appointing authority asserted that the appellant was charged with violating *N.J.S.A. 2C:29-2B* for attempting to elude the police on January 10, 2011 and was found guilty of violating *N.J.S.A. 2C:29-1A* for obstruction of the administration of the law on July 27, 2011. It also stated that he was charged with violating *N.J.S.A. 2C:20-11B(2)* for concealing merchandise from a store on July 23, 2004 and found guilty of the amended local ordinance violation on December 23, 2004. Further, he was charged with violating *N.J.S.A. 2C:12-1* for assault and *N.J.S.A. 2C:29-2* for resisting arrest on August 20, 2005 and found guilty of amended local ordinance violations. The appointing authority also indicated that the appellant failed to disclose on his application being a defendant to a Final Restraining Order (FRO) issued on February 2, 2005 that was dismissed on September 9, 2005, and provided conflicting versions of his termination from Burger King.

On appeal, the appellant states that he did not falsify his application and that he provided any and all necessary documents requested during the application process. He also states that he answered every question that was asked clearly and

appropriately to the best of his knowledge. In this regard, he states that he included a copy of the FRO in the package he sent to the appointing authority. Additionally, the appellant concedes that he has an arrest record, but states that he has changed his life.

In response, the appointing authority presents that the appellant has had numerous adverse encounters with law enforcement officials and he failed to disclose information on his application. In support, the appointing authority provides a copy of the application filed by the appellant and copies of his arrest records. On page 13 of his application, he explained that he was terminated from Devereux of New Jersey because he "did not like the way residents were being treated by staff." However, on page 14 he indicated he was terminated from Devereux in October 2010, but "was never told why." On page 13 of his application he also indicated that he was not sure if he quit or was terminated from Burger King, explaining that he "was asked to choose work over community college. I chose school." However, on page 14 he indicated that he was terminated from Burger King, but was never told why, but speculated that since he "called out on my birthday and was told the next day when he walked into work to go home."

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 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).

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 eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

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 Civil Service 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:4-6.1(a)7 states that an eligible may be removed from the list who has a prior employment history which relates adversely to the title.

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 or her name from an eligible list was in error.

In the instant matter, the appointing authority had a reasonable basis to remove the appellant's name from the subject list. Most recently, the appellant was charged with violating *N.J.S.A.* 2C:29-2B for attempting to elude the police on January 10, 2011 and was found guilty of violating *N.J.S.A.* 2C:29-1A for obstruction of the administration of the law on July 27, 2011. Although the appellant's arrest and conviction were for a disorderly persons offense and cannot give rise to the disability arising under *N.J.A.C.* 4A:4-4.7(a)4, the fact that the appellant was involved in such activity reflects upon his character and his 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).

It is well established that municipal police departments may maintain records 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). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority when requested for purposes of making a hiring decision. However, *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. Accordingly, the disability arising under *N.J.A.C.* 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal. However, although it is clear that the appellant was never convicted of a crime, he has been arrested on several occasions. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. See *In the Matter of Tracey Shimonis*,

Docket No. A-3963-01T3 (App. Div. October 9, 2003). In this case, the appellant was also charged as a juvenile with violating *N.J.S.A. 2C:20-11B(2)* for concealing merchandise from a store on July 23, 2004 and found guilty of the amended local ordinance violation on December 23, 2004. Further, he was charged with violating *N.J.S.A. 2c:12-1* for assault and *N.J.S.A. 2C:29-2* for resisting arrest on August 20, 2005 and found guilty of amended local ordinance violations.

Otherwise, while the appellant did not check box in response to question #55 that he had FRO as a defendant, he provided a copy of the order with his application. Therefore, he did not falsify his application in that regard as he provided documentation with his application indicating that he was the subject of a FRO. However, the record evidences that the appellant provided conflicting versions of his terminations from Burger King and Devereux in response to questions #33 and #36 on his application which indicate that he was terminated under questionable circumstances. His employment record, in conjunction with his 2011 conviction for obstruction of the administration of justice as an adult and his juvenile arrests, is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Correction Officer Recruit. In this regard, it is recognized that a Correction Officer Recruit is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also *In re Phillips*, 117 *N.J.* 567 (1990). The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. The appellant's background does not demonstrate possession of these qualities.

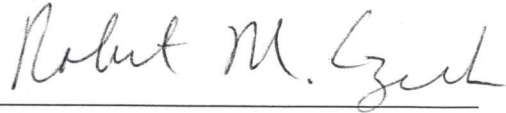
Under the totality of the circumstances in this case, the appointing authority has presented sufficient basis to remove the appellant's name from the Correction Officer Recruit (S9988T) eligible list.

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 9TH DAY OF MARCH, 2017



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