



STATE OF NEW JERSEY

In the Matter of David Paul, Sheriff's
Officer (S9999U), Camden County
Sheriff's Office

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

CSC Docket No. 2019-480

List Removal Appeal

ISSUED: JANUARY 22, 2019 (SLK)

David Paul appeals his removal from the eligible list for Sheriff's Officer (S9999U), Camden County Sheriff's Office (Sheriff's Office) on the basis that he possessed an unsatisfactory driving record.

The appellant took the open competitive examination for Sheriff's Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory driving history.

On appeal, the appellant presents that he has been a Camden County Correction Officer since August 2017 and that his duties are similar to the subject title. He states that as a County Correction Officer, he has not had any adverse driving incidents. Additionally, the appellant highlights that he passed a background investigation when he was hired as a County Correction Officer. Further, he is also employed as an Emergency Medical Technician and he has not had any adverse driving incidents in this position. Moreover, he was previously employed by the Sheriff's Office as a Records Support Technician and he never received any disciplinary action or complaints against him while serving in this title. Also, the appellant indicates he had previously worked as a County Park Ambassador and County Security Officer for Camden County College and he did not have any adverse driving incidents in these titles. He acknowledges that he received numerous motor vehicle violations. However, he states that his last motor vehicle violation was over

four years ago and he has not had a motor vehicle accident in over two years. The appellant indicates that his last motor vehicle accident was minor, in which he paid out-of-pocket for the other vehicle's repairs.

In response, the Sheriff's Office submits the appellant's certified driver's abstract and its background report. It states that these documents indicate that the appellant received numerous motor vehicle-related violations between September 2009 and February 2016.¹ Additionally, his license was suspended between March 21, 2013 and April 20, 2013. The Sheriff's Office indicates that while the appellant occasionally transports prisoners as a County Correction Officer, he is far less likely to be involved in a vehicle pursuit as well as confronting an armed subject than he would be in the subject title. Further, the background report indicates that in 2006 the appellant was charged with Harassment for a "prank" bomb threat which led to him serving community service, he was charged with operating a motor vehicle in possession of CDS in December 2011, he was a suspect for an incident where a vehicle was flipped over by a group of people at a party in December 2012, he was arrested for driving while intoxicated in January 2013 which led to him serving community service, and he was charged with disorderly conduct in August 2013 for removing promotional signs from a fast food restaurant. It asserts that if the appellant was involved in a motor vehicle accident while serving in the subject title, his driving and criminal history could be questioned during litigation. The Sheriff's Office acknowledges that the appellant performed well while employed as a Records Support Technician. However, it presents that in the subject title, he will be directly responsible for persons in his custody and he must make authoritative decisions to safeguard life and property. The Sheriff's Office argues that the appellant has shown a pattern of past poor decisions, which is a cause for concern. However, the Sheriff's Office states that if the appellant can demonstrate in the future that he can adhere to motor vehicle laws, it would encourage the appellant to reapply.

In reply, the appellant admits that he received 10 motor vehicle violations and one driver's license suspension between August 2009 and December 14, 2017, the date he applied for the position. Further, the appellant acknowledges that he received a Driving After Underage Drinking in January 2013. He accepts that this incident involved poor judgment on his part, however, he indicates that this event took place several months prior to his 21st birthday. The appellant represents that of the 10 motor vehicle violations, only six were for moving violations and the rest were equipment violations. He highlights that he has not had a violation since February 2015. Further, while the appellant acknowledges that he has been in four motor vehicle accidents, he states that he was only deemed at fault in two. The appellant explains that one of the reasons he has so many motor vehicle violations was that he had been driving over 30,000 miles per year between personal and business driving, and he never had any accidents or received any motor vehicle violations while driving

¹ The appellant's certified driver's abstract indicates his last moving violation was for speeding on February 6, 2015 and not 2016.

for employment. He asserts that he has learned from his past mistakes as demonstrated by the fact that he has not received a motor vehicle violation or been involved in an accident in years.

Concerning his criminal history, he acknowledges that he was charged with harassment in 2006 when he was 13 for making a prank phone call regarding a bomb scare, he was cited in 2011 at age 19 for operating a motor vehicle while knowingly in possession of CDS, which was dismissed after the passenger admitted that the marijuana and drug paraphernalia belonged to the passenger, and in 2013 at age 21, he received a municipal ordinance violation while involved in a college prank to remove promotional signs from a restaurant. He regrets this behavior that occurred in his youth and asserts that he no longer conducts himself in this matter.

Additionally, the appellant presents his employment as a County Correction Officer, where he has been employed over a year without evidence of any disciplinary issues, as evidence that he can successfully perform the duties of the subject title. He contends that the duties of the two titles are similar as he carries a handgun, is responsible for enforcing the laws and jail policies, he investigates crimes, and uses his judgment concerning the use of reasonable force when dealing with inmates. The appellant highlights that as an Emergency Medical Technician he routinely operated an ambulance at high speeds in specific emergency situations and there were never any issues with his driving. While he acknowledges that the Civil Service Commission (Commission) decides list removal appeals on a case by case basis, he submits several prior Commission decisions to support his position that his name should be restored to the list. The appellant also submits a letter from 2015 from State Senator Nilsa Cruz-Perez and an undated letter from Robert Hoffman, a former employer, in support of his appeal.

CONCLUSION

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.

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, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. 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).

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, a municipal police department, 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, it is noted that 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).

With respect to the appellant's driving history, *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. The Commission has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle violations reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

In this matter, the Sheriff's Office had valid reasons to remove the appellant's name from the list. On appeal, the appellant acknowledges that he had 10 motor vehicle violations and his driver's license was suspended once. Additionally, the appellant acknowledges that he was charged with harassment in 2006 when he was 13 for a prank, he was cited in 2011 at age 19 for operating a motor vehicle while knowingly in possession of CDS, which was dismissed, and in 2013 at age 21 he received a municipal ordinance violation while involved in a college prank. While the appellant asserts that he learned from these past mistakes that he blames on his youth and it has been years since his last violation of the criminal or motor vehicle laws, it is noted that his last motor vehicle violation was in February 2015, which was less than two years prior to the August 31, 2016 subject examination closing date. Further, while the appellant presents his employment history to demonstrate that he has not had any disciplinary issues, has not had adverse driving issues while in these positions, and has been successful as a County Correction Officer, a position that he believes is similar to the subject title, there was insufficient time for the appellant to demonstrate that he possesses the good character and judgment necessary to be a Sheriff's Officer by the closing date. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The Commission notes, however, that with sufficient passage of time and no further negative incidents, his driving and criminal records will be insufficient to support his removal from a future law enforcement eligible list.

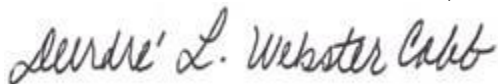
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Sheriff's Officer (S9999U), Camden County Sheriff's Office eligible list.

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 16th DAY OF JANUARY, 2019



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