



STATE OF NEW JERSEY

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

In the Matter of A.C., Correctional
Police Officer (S9988A)

List Removal Appeal

CSC Docket No. 2020-2501

**ISSUED: NOVEMBER 27, 2020
(ABR)**

A.C. appeals her removal from the Correctional Police Officer (S9988A), Department of Corrections (DOC) eligible list on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, applied for and passed the examination for Correctional Police Officer (S9988A), which had a closing date of August 31, 2019. The subject eligible list promulgated on May 15, 2020 and expires on May 14, 2022. The appellant's name was certified from the subject eligible list. The appointing authority removed the appellant's name from the subject eligible list on the basis of an unsatisfactory criminal record. Specifically, the appointing authority indicated that the appellant, at age 22, was charged with aggravated assault on law enforcement in violation of *N.J.S.A. 2C:12-1b*, a third degree crime; terroristic threats in violation of *N.J.S.A. 2C:29-2A*, a third degree crime; and resisting arrest/eluding officer in violation of *N.J.S.A. 2C:29-2A*, a third degree crime. It noted that the charges were diverted through the Pre-Trial Intervention Program (PTI) and ultimately dismissed on February 26, 2014.

On appeal to the Civil Service Commission (Commission), the appellant argues that she should be restored to the eligible list. Initially, the appellant states that the appointing authority removed her name from the eligible list because it maintained that she entered into a PTI program within seven years of the promulgation date of the subject eligible list. The appellant avers that her March 4, 2013 entry into PTI does not meet this standard. In addition, the appellant contends that the totality of the record further supports the restoration of her name to the eligible list, as her arrest was an isolated incident and she has demonstrated significant rehabilitation

since then. The appellant states that her arrest stemmed from an April 2012 incident, in which she got into an argument with a teacher's aide at her then-six-year-old daughter's school in the City of Jersey City. The appellant explains that she brought her daughter to school 10 or 15 minutes late and got into an argument with a teacher's aide because she believed the aide was acting abusively towards her daughter because of her late arrival. The appellant avers that she did not threaten the teacher's aide with violence, but that she suggested that they step outside to avoid having the kindergarten children in the room witness them shouting at one another. She states that she soon decided to leave of her own accord, but that on her way out, she was confronted by two police officers, who told her that she was not under arrest. Accordingly, she assumed that she could leave. However, she submits that as she began to move, she accidentally brushed up against one of the officers and they proceeded to arrest her. She also maintains that the officers falsely claimed that she resisted arrest. The appellant states that the charges were ultimately diverted through PTI, dismissed after she completed community service and an anger management course, and expunged through an October 7, 2019 court order. The appellant proffers that she has not had any other negative interaction with law enforcement since the incident at issue and has demonstrated significant rehabilitation since completing PTI, including attaining medical billing and coding, and medical administrative assistant certifications; obtaining a New Jersey Security Officer Registration Act (SORA) license; and pursuing an Associate's degree. Moreover, the petitioner submits, in relevant part, a PTI Order of Dismissal dated February 26, 2014 and a copy of an October 7, 2019 Order of Expungement. Finally, the appellant highlights that although the Commission upheld her removal from a prior list for the subject title, it noted that with the passage of time and absent any further adverse incidents, her background could be insufficient to remove her name from future similar lists.

In response, the appointing authority asserts that the appellant's criminal history indicates that she would not be suited for a Correctional Police Officer position, as her record is inconsistent with its goals and objectives of selecting candidates who demonstrate respect for the law and use good judgment. Accordingly, it maintains that the Commission should uphold the removal of her name from the subject eligible list for the same reasons it cited in its prior decision upholding the appellant's removal from an earlier list.

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.

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 or her name from an eligible list was in error.

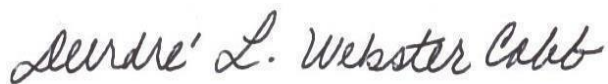
Participation in the PTI Program is neither a conviction nor an acquittal. *See N.J.S.A.* 2C:43-13(d). *See also Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. The Appellate Division has observed that while the PTI Program provides a channel to resolve a criminal charge without the risk of conviction, it has **not** been construed to be a favorable disposition. *See In the Matter of Clifton Gauthier, Rockaway Township*, 461 *N.J. Super.* 507 (App. Div. 2019); *See also Grill, supra*. Furthermore, 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. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI). It is undisputed that the appellant was charged with aggravated assault on law enforcement, terroristic threats and resisting arrest/eluding officer and that the charges were diverted through PTI. The appellant was 22 years old at the time of the incident, which occurred more than seven years prior to the closing date. The Commission observes that this appears to be an isolated incident, as it is her only negative interaction with law enforcement that is noted in the record. Furthermore, the appellant submits proof that the underlying charges have been expunged from her record. Moreover, the appellant has provided other evidence of her rehabilitation, including the completion of various certification programs, her pursuit of an Associate's degree and her procurement of a SORA license. Accordingly, the foregoing demonstrates that the appellant has met her burden of proof in this matter and the appointing authority has not shown sufficient grounds to remove her name from the Correctional Police Officer (S9988A), Department of Corrections eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and that the appellant's name be restored to the Correctional Police Officer (S9988A), Department of Corrections eligible list for prospective employment opportunities only.

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 24TH DAY OF NOVEMBER 2020



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