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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Robert Dawkins,  
Correction Officer Recruit (S9988R),  
Department of Corrections

CSC Docket No. 2014-1927

List Removal Appeal

ISSUED: OCT 24 2014 (WR)

Robert Dawkins appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that the appointing authority had presented a sufficient basis to remove his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, on the basis of having an unsatisfactory criminal record.<sup>1</sup>

The appellant, a nonveteran, took the open competitive examination for Correction Officer Recruit (S9988R), Department of Corrections, achieved a passing score, and was ranked on the subsequent eligible list, which promulgated on May 23, 2013 and expires on May 22, 2015. The appellant's name was certified on June 5, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list due to his unsatisfactory criminal record. Specifically, it asserted that the appellant was found guilty of Obstructing the Administration of Law on July 27, 2011.<sup>2</sup> In support, the appointing authority submitted a copy of the appellant's employment application and New Jersey Criminal History Detailed Record. A review of the appellant's employment application and Criminal History Detailed Record reveals that he was charged with the following: Receiving Stolen Property on April 20, 2003; Simple Assault and Disorderly Conduct on June 12, 2003; Aggravated Assault and

<sup>1</sup> CPM's determination incorrectly states that the appellant's name was removed from the June 10, 2011 certification (JU11M1) for Correction Officer Recruit (S9987M), Department of Corrections.

<sup>2</sup> The record indicates that the appellant was initially arrested for Attempt to Elude Police on January 10, 2011.

Criminal Mischief on August 1, 2003; Shoplifting on July 23, 2004; Obstructing the Administration of Law and Resisting Arrest on November 24, 2004; Obstructing the Administration of Law on January 29, 2005; Contempt of a Restraining Order on April 19, 2005; Resisting Arrest and Simple Assault on August 20, 2005; and Obstructing the Administration of Law on January 11, 2011.<sup>3</sup> Although the appellant indicated on his application he was "not sure" about the disposition of these charges, a review of his criminal record indicates that the July 23, 2004 Shoplifting charge and the August 20, 2005 Resisting Arrest and Simple Assault charges were downgraded to violations of local ordinances and he paid fines. It is also noted that with regard to the January 11, 2011 arrest, the original charge was Attempting to Elude the Police, however he was found guilty of Obstructing the Administration of Law, and also paid a fine. All of the other charges were dismissed.

The appellant appealed to CPM, asserting that, with regard to the January 11, 2011 arrest, he was a victim of racial profiling by the police and did not feel safe stopping his vehicle for the police and therefore, he called 911 and drove to the Police Station. Furthermore, he argued that the downgrading of the original charge to Obstructing the Administration of Law evidenced the weakness of the case against him. CPM determined that the appointing authority presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant contends that he is "trying to turn his life around" and indicates that he received a Bachelor's degree in Criminal Justice in May 2013 and his criminal record was expunged on June 7, 2013. He argues that because the State has forgiven him for his past mistakes, the appointing authority should as well. In support of his appeal, the appellant submits the June 7, 2013 expungement order and related documents, correspondence from this agency regarding the certification of his name, and a copy of his employment application with other related documents.

In response, the appointing authority "wishes to stand with its original submission of documentation." It states that the appellant was arrested for attempting to elude the police "only one year prior to [his] filing an online application" for the subject position. Moreover, it notes that the appellant's criminal record was not expunged by Court Order until June 4, 2013, which was eight days before his name was certified to the subject eligible list.<sup>4</sup> Finally,

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<sup>3</sup> The appellant also indicated that he was charged with "N.J.S.A. 2C: 11c(4)," which is not an offense listed in the New Jersey Criminal Code. It is noted that the June 12, 2003 Simple Assault and Disorderly Conduct charges and the January 29, 2005 Obstructing the Administration of Law charge are not included in his New Jersey Criminal History Detailed Record.

<sup>4</sup> It appears that the appointing authority made a typographical error, as the record indicates that the subject certification was issued on May 23, 2013 and the appellant's Expungement Order is dated June 7, 2013.

although it concedes that many of the charges in the appellant's criminal record were dismissed, it nevertheless argues that the appellant's lengthy criminal record displays a lack of respect for the law, which is inconsistent with the standards expected of a law enforcement officer.

It is further noted that the appellant did not provide any certified court disposition paperwork for the charges he listed despite instructions in the employment application to do so.

### CONCLUSION

*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 relates to the position of Correction Officer Recruit. 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 of a pardon or an expungement shall prohibit removal from a list, 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. See *N.J.A.C.* 4A:4-4.7(a)4ii; see also, *N.J.S.A.* 2C:52-27(c). 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. *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.

Initially, the Commission notes that, due to the nature of the title, a candidate for Correction Officer Recruit may be disqualified from the position notwithstanding the candidate's presentation of a pardon or expungement. See *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4*. In the instant matter, the appellant was arrested nine times from 2003 to 2011 and found guilty of Shoplifting and Resisting Arrest and Simple Assault, which are disorderly persons offenses. Although an arrest and conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that a candidate was involved in such activity may reflect upon his or her character and ability to perform the duties of the position sought. See e.g., *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002). Thus, the Commission must review the factors outlined 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 arrests adversely relate to the position of Correction Officer Recruit.

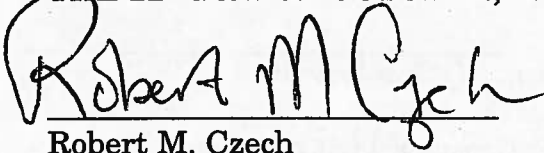
In that regard, there is no dispute that the appellant's criminal history adversely relates to the position of a Correction Officer Recruit. Apart from his most recent Obstructing the Administration of the Law charge, he does not provide any information regarding the circumstances surrounding any of his other arrests. Rather, he essentially asserts that they should not be considered because they were expunged. Nevertheless, as indicated above, the presentation of an expungement will not preclude an applicant for a Correction Officer Recruit from being rejected for employment. Moreover, the appellant has been arrested nine times as an adult and his last arrest occurred only two years prior to his consideration for appointment. Regarding rehabilitation, the foundation for an expungement is equivalent of evidence of rehabilitation. See *N.J.S.A. 2C:52-3* and *N.J.S.A. 2C:52-8*; See also, *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006). However, given that the appellant failed to explain the circumstances surrounding his arrests, his age at the time of his arrests, and the fact that the appellant was arrested nine times in total, the expungement of his arrests and convictions cannot outweigh those factors, especially considering that his criminal record was expunged after his name was certified. The Commission is mindful 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. Accordingly, the Commission finds that the appellant's arrests adversely relate to the position of Correction Officer Recruit. The appellant has failed to meet his burden of proof in the matter and a sufficient basis exists in the record to remove the appellant's name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections.

**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 22<sup>nd</sup> DAY OF OCTOBER, 2014**



Robert M. Czech  
Chairperson  
Civil Service Commission

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and  
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STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION

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Kim Guadagno  
Lt. Governor

Robert M. Czech  
Chair/Chief Executive Officer

January 16, 2014

Robert Dawkins

**Title:** Correction Officer Recruit  
**Symbol:** S9987M  
**Jurisdiction:** Department of Corrections  
**Certification Number:** JU11M1  
**Certification Date:** 06/10/11

**Initial Determination: Removal – Unsatisfactory criminal Record**

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C.* 4A:4-4.7(4), which permits the removal of an eligible candidate's name from the eligible list if the eligible has a criminal record which adversely relates to the employment sought

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Division of Appeals & Regulatory Affairs (ARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to ARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

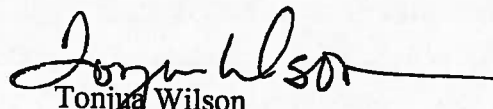
Robert Dawkins

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Address all appeals to:

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PO Box 312  
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Sincerely,



Tonjia Wilson  
Human Resource Consultant  
State Certification Unit

For Joe M. Hill Jr. Assistant Director  
Division of Classification & Personnel Management

C Joseph Mulholland, HR Director  
File

