



STATE OF NEW JERSEY

In the Matter of Kenneth Reed,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2578

List Removal Appeal

ISSUED: JUL 30 2014 (SLK)

Kenneth Reed, represented by Nancy Valentino, Esq., appeals the attached determination of the Division of Classification and Personnel Management (CPM) upholding the removal of his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, on the basis of an unsatisfactory criminal record.

By way of background, the appellant's name appeared on certification JU13D01 that was issued to the appointing authority on May 22, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory criminal record. In support of its request, the appointing authority provided a copy of the appellant's criminal investigation background report. The report indicated that the appellant was convicted of a disorderly persons offense, simple assault in 2006, and that in 2008 he was arrested and charged with aggravated assault, possession of a weapon, and possession of a weapon for an unlawful purpose. The 2008 charges were downgraded and resulted in a guilty plea to a local ordinance of loitering. Consequently, the appointing authority requested the removal of the appellant's name from the subject eligible list due to an unsatisfactory criminal record. The appellant appealed the matter of the removal of his name to CPM, which found that the appointing authority sustained its request.

On appeal, the appellant states that he fully disclosed the 2008 arrest when he was 19 years old in response to question 46. He presents that he was only ages 17 and 19 at the time these incidents occurred and that six years have passed and he has not had any other interactions with the police. The appellant asserts that it is not uncommon for teenagers who have reached the age of majority to be occasionally engaged in altercations at a young age when they have not yet reached full maturity. Now that he is 25, he asserts that he has been an exemplary citizen, completed the conditional discharge requirements, and therefore should be placed on the eligible list.

In support of its request for removal, the appointing authority presents that it will disqualify candidates who have been convicted of a disorderly offense within the last 10 years and the appellant was convicted of a disorderly offense, simple assault, eight years ago in 2006. Further, it states that it will remove candidates who have entered into a conditional discharge agreement or pre-trial intervention program for a disorderly persons offense and the appellant was convicted of a simple assault in 2006 and participated in a Juvenile Conference Committee diversion program which required him to perform 15 hours of community service and attend a School Violence Program. Additionally, it will remove candidates that have a demonstrated history that is inconsistent with the standards expected of a law enforcement officer. In this regard, the appellant admitted on his application that when he was 17 he had a physical altercation with other classmates at school. Rather than walk away and report the incident to school officials, he chose to handle the matter with violence. Furthermore, the appointing authority submits a statement prepared by the appellant indicating that he "did not learn much of anything" by attending the School Violence Program. Subsequently, in 2008, as an adult, he was charged with aggravated assault, possession of a weapon, and possession of a weapon for an unlawful purpose. The appointing authority explains that the victim in that situation claimed that the appellant threw a lamp at him causing injury. The appointing authority asserts that regardless of the actual details of the event, the incident demonstrates his violent actions. It notes that the charges were downgraded to loitering in exchange for the victim receiving restitution from the appellant for his medical bills. Therefore, the totality of the appellant's background does not make him a suitable candidate for a law enforcement position.

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.

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:4-6.3(b) provides that an appellant has the burden of proof to show that an appointing authority's decision to remove the appellant's name from an eligible list was in error.

Further, 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).

In the instant matter, the appointing authority has presented a valid basis to substantiate its request to remove the appellant's name from the subject list. The closing date for the subject examination was January 14, 2013. In February 2006, at age 17, the appellant was convicted of a disorderly persons offense. As part of the Juvenile Conference Committee Agreement, in addition to community service, the appellant was mandated to attend a "School Violence Program." As part of the program, the appellant was to submit a statement indicating what he learned. In that statement, the appellant indicated, "I did not learn much of anything." Then, in March 2008, the appellant was involved in an incident where he admitted that he threw an object that caused physical harm to the victim. The appellant was convicted of loitering and ordered to pay restitution. In other words, approximately seven years prior to the closing date for the subject examination, the appellant was involved in a violent act and he showed no remorse or rehabilitation from the incident. Instead, approximately two years later, the appellant was again involved in another violent act where he caused physical harm to a victim and was ordered to pay restitution for the victim's medical expenses. Consequently, the appellant has engaged in multiple violent actions and he has not submitted any evidence of rehabilitation.

Additionally, the appellant's multiple adverse encounters with law enforcement demonstrate his disregard of the law. This is unacceptable for

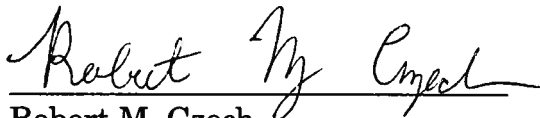
applicants who seek positions in law enforcement. The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. In this regard, the Civil Service Commission (Commission) is mindful that a Correction Officer Recruit is a law enforcement employee who 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). Further, although the appellant's first 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). Moreover, juvenile arrests 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). Also, the Commission notes that the appellant's second arrest and conviction took place while he was an adult at age 19. Therefore, in reviewing the totality of the appellant's background, the appointing authority has shown sufficient cause for removing his name from the Correction Officer Recruit (S9988R) 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 30th DAY OF JULY, 2014



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Kenneth Reed
Nancy Valentino, Esq.
James Mulholland
Kenneth Connolly