

B-18



STATE OF NEW JERSEY

In the Matter of Eddie Acosta,
County Correction Officer (C9979M),
Essex County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2238

List Removal Appeal

ISSUED: SEP 22 2014 (JET)

Eddie Acosta, represented by Erik C. Acosta, Esq., appeals the removal of his name from the County Correction Officer (C9979M), Essex County, eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for County Correction Officer (C9979M),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on September 9, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. It is noted that the appointing authority did not provide any additional information regarding the appellant's criminal history. Upon the appellant's appeal, this matter was referred to the Civil Service Commission (Commission) for direct review.

It is also noted that the appellant was removed from the Correction Officer Recruit (S9987M), Department of Corrections (DOC), eligible list on the basis of an unsatisfactory criminal record.² Upon his appeal, the Commission restored the appellant's name to the eligible list. See *In the Matter of Eddie Acosta* (CSC, decided December 4, 2013) *aff'd on reconsideration* (CSC, decided August 13, 2014).

¹ It is noted that the County Correction Officer (C9979M), Essex County eligible list promulgated on June 10, 2011 and expired on May 1, 2014.

² In that matter, DOC asserted, among other things, that the appellant was charged with Receiving Stolen Property (vehicle) in violation of *N.J.S.A. 2C:20-7a*, Unauthorized Use of Vehicle in violation of *N.J.S.A. 2C:20-10*, and Larceny-Parts of a Vehicle (dismissed) in violation of *N.J.S.A. 2C:20-3*.

The Commission determined that since the incident happened more than 24 years ago, was an isolated incident, and the appellant provided evidence of his rehabilitation, his name should be restored to the eligible list.³

On appeal, the appellant acknowledges that he was charged with the third degree offense of Receiving Stolen Property (Vehicle) and he completed probation, paid fines and was issued a seven day jail time credit. The appellant explains that on the date of the offense in 1989, he was employed at National Car Rental and his supervisors allowed him to borrow a company rental car so he could take his pregnant girlfriend for an OB/GYN appointment. The appellant adds that he was unaware that the rental car was previously reported as stolen before he took possession of the vehicle and he was subsequently arrested in Newark. Further, the appellant contends that it was an isolated incident since more than 24 years have passed since that time and the charges were expunged. In this regard, the events that led to the appellant's sole conviction occurred 24 years ago in 1989 when he was approximately 23 years old. The appellant adds that he is now married, has children and is 44 years old. Therefore, he maintains that his name should not have been removed due to an isolated incident that occurred 24 years ago.

Additionally, the appellant maintains that his involvement should have been given little weight since he has been rehabilitated. Further, the appellant asserts that he has obtained CPR and medical training and has been employed at UMDNJ since October 1998. In this regard, he is now a supervisor at UMDNJ and has dedicated over 20 years to the field of medical services. The appellant adds that he has been a certified Emergency Medical Technician (EMT) since 1991 and has worked in Emergency Medical Services (EMS) continuously since that time. The appellant also obtained his Firearms Identification (FID) card and he successfully completed a Carrying Concealed Weapons (CCW) Security Course. He is presently employed part-time as an armed guard and is certified in the use of handcuffs, baton, mace, and firearms. Moreover, there is nothing in the appellant's history which is adverse to the employment sought.

The appellant's supervisor, Kevin Jenkins, provides a letter in support of the appellant's contentions. Specifically, Jenkins indicates that the appellant has been employed at UMDNJ since October 1998 and he recommends the appellant for employment as a Correction Officer Recruit.

Despite being provided with the opportunity, the appointing authority did not provide a response.

³ The Commission noted that the appellant's criminal record reflected that he was charged with receiving Stolen Property (Vehicle) on October 9, 1989 in violation of *N.J.S.A. 2C:20-7a*, for which he was found guilty and paid a \$30 fine. Further, the appellant was charged with Larceny-Parts of a Vehicle on September 7, 1992 in violation of *N.J.S.A. 2C:20-3* which was dismissed. The appellant also submitted evidence that the charges were expunged on August 12, 2009.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows for the removal 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. Additionally, *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 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.

Moreover, *N.J.S.A.* 11A:4-10 provides that an eligible for a law enforcement, fire fighter or correction officer title may be questioned as to any arrest. 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. For example, in *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992), 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. *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.

Moreover, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement. See *N.J.S.A.* 2C:52-3 and *N.J.S.A.* 2C:52-8.

In the instant matter, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. In this case, as in *Acosta, supra*, the record indicates that the appellant was arrested and found guilty only one time in 1989 which was subsequently expunged. Further, the appellant provides an adequate explanation regarding the circumstances of that arrest, which the appointing authority does not dispute. The record also reflects that the appellant was charged with Larceny in 1992 which was dismissed. While the appellant was an adult at the time of his arrests, it is clear that the 1989 charge was an isolated incident since he was not found guilty for any other incidents after that time. In addition, over 20 years have passed since the time of his arrests in 1989 and 1992. The appellant also provides evidence of his rehabilitation, indicating that he is a long term supervisory employee at UMDNJ, and his supervisor provides a letter of recommendation indicating that the appellant is an "asset" to UMDNJ. Thus, based on a review of the record and the totality of the circumstances, including the amount of time that has passed since the appellant's sole conviction in 1989 and the fact that he is now a long term employee at UNDNJ, he has provided enough information to show that he has been rehabilitated. Moreover, the appointing authority does not provide any substantive information to show that the appellant has not been rehabilitated.

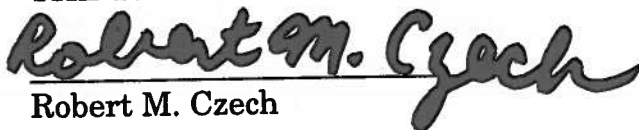
Accordingly, given the position at issue and in consideration of the totality of the circumstances, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the eligible list for County Correction Officer (C9979M), Essex County.

ORDER

Therefore, it is ordered that this appeal be granted and the list for County Correction Officer (C9979M), Essex County be revived in order for the appellant to be considered for appointment at the time of the next certification 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 17th DAY OF SEPTEMBER, 2014



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