

B-25 CSC



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Kurt Frederick,
Correction Officer Recruit (S9988R),
Department of Corrections

CSC Docket No. 2014-2537

List Removal Appeal

ISSUED: FEB 06 2015 (EG)

Kurt Frederick appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that the Department of Corrections (DOC) had presented a sufficient basis to remove his name from the Correction Officer Recruit (S9988R), eligible list due to an unsatisfactory criminal record.

The subject eligible list (S9988R) was promulgated on May 23, 2013 and expires on May 22, 2015. On December 3, 2013, the DOC notified the appellant that his name was being removed from the eligible list on the basis of an unsatisfactory criminal record. Specifically, it indicated that in 2005, the appellant pled guilty to 3RD degree assault and 2ND degree harassment and entered into a one year conditional discharge and order of protection program. In 2006, the appellant pled guilty to 2ND degree harassment and criminal contempt and again entered into a one year conditional discharge and order of protection program. The appellant appealed his removal to CPM, arguing that the charges against him were false and filed by a woman who had over 10 criminal incidences on her record in the prior five years and had filed false charges against other individuals. Additionally, the appellant claimed that although he did nothing wrong, he was advised to plead guilty to expedite the closure of the cases. Further, the appellant added that he had never been in trouble before these incidents and had been a responsible member of society. Since these incidents, the appellant asserted that he completed an anger management class and is a member of his local insulators union. In reviewing this matter, CPM determined that the appellant's criminal record adversely related to the position and therefore upheld his removal.

On appeal, the appellant reiterates his prior arguments. Further, he states that the woman who filed the charges against him agrees that it was a big mistake on her part. As support for his argument, the appellant had this woman sign his appeal letter.

In response, the DOC reiterates that the appellant should be removed for an unsatisfactory criminal record and argues that his removal is consistent with its preemployment processing criteria. It asserts that the appellant indicated on his preemployment application that he used physical force to move the victim in both the incidents that led to his arrests. Further, the DOC explains that based on his guilty pleas in a domestic violence matter and the two orders of protection, the appellant is precluded from PTC certification because he cannot possess a firearm. See *N.J.S.A. 2C:39-7b(2)*. Moreover, DOC states that it strives to select candidates who exhibit a good work ethic and respect for the law as this is imperative to effectively manage the day-to-day operations of a correctional system, and argues that the appellant is not a suitable candidate.

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.

Further, *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 employment 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.

On appeal, the DOC indicated that the appellant was removed consistent with its preemployment processing criteria. However, it is noted that the Civil Service Commission (Commission) must decide each list removal appeal on the basis of the record presented, and is not bound by the criteria utilized by the appointing authority. See e.g., *In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In the instant matter, the record evidences that in 2005 the appellant pled guilty to 3RD degree assault and 2ND degree harassment charge and entered into a one year conditional discharge and order of protection program. In 2006, the appellant pled guilty to 2ND degree harassment and criminal contempt and again entered into a one year conditional discharge and order of protection program. The appellant was an adult at the time of the incidents, and the convictions against the appellant reflected serious offenses. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. In this regard, it is recognized 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). The public expects prison guards to present a personal background that exhibits respect for the law and rules. In this matter, the Commission finds that such an arrest record adversely relates to the employment sought.

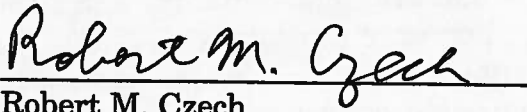
Moreover, while the appellant claims that these were isolated incidents and that he was a responsible member of society, completed an anger management program and is a member of his local insulators union, and that such evidence of rehabilitation is sufficient to overcome his criminal record, the Commission disagrees. The appellant's evidence of rehabilitation is insufficient to overcome his convictions for such serious domestic violence offenses. Furthermore, the DOC has presented evidence that, based on his guilty pleas in a domestic violence matter and the two orders of protection, the appellant is precluded from PTC certification because he cannot possess a firearm. Accordingly, given the position at issue and in consideration of the totality of the evidence in the record, there exists a sufficient basis to remove the appellant's name from the eligible list for Correction Officer Recruit (S9988R).

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 4TH DAY OF FEBRUARY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Kurt Frederick
James Mulholland
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

April 1, 2014

Kurt Frederick

Title: Correction Officer Recruit
Symbol: S9988R
Jurisdiction: Department of Corrections
Certification Number: JU13D01
Certification Date: 05/23/13

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 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.

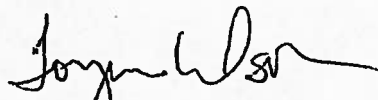
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, 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.

Kurt Frederick
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Address all appeals to:

Henry Maurer, Director
Appeals & Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,



Tonjua Wilson
Human Resource Consultant
State Certification Unit

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

C James J. Mulholland, Director
File