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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Richard Lafaman,
Correction Officer Recruit (S9988R),
Department of Corrections

List Removal Appeal

CSC Docket No. 2014-2856

ISSUED: FEB - 9 2015 (LDH)

Richard Lafaman, represented by Mark F. Casazza, Esq., appeals the determination of the Department of Corrections, which removed the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections, eligible list on the basis of an unsatisfactory criminal record and falsification of his employment application.

The examination for Correction Officer Recruit (S9988R) was announced with a closing date of January 31, 2013. The resultant eligible list promulgated on May 23, 2013 and expires on May 22, 2015. In disposing of the subsequent certification, the appointing authority removed the appellant's name from the subject eligible list due to an unsatisfactory criminal history and falsification of his application. In this regard, the appointing authority indicated that the appellant's record evidenced a 2007 4th degree N.J.S.A. 2C:17-3B(2)-Criminal Mischief charge. Finally, it asserted that he failed to disclose this charge on his application.

On appeal to the Civil Service Commission (Commission), the appellant argues his criminal history is not a disqualifying reason to justify his removal from the list. The appellant states that in 2007, when he was 15 years old, he was charged with a criminal mischief violation. The appellant maintains the charge arose after the appellant and his peers were in a verbal argument with another group of kids. After the verbal altercation, the other group of kids got into a motor vehicle and drove it in the appellant's direction. The appellant states he then punched the window of the passenger side of the vehicle in an effort to defend himself and scare the group of kids off. The matter was referred to the juvenile conference committee (JCC) and ultimately dismissed after completing the JCC requirements. Since 2007, the appellant has not had any contact with law enforcement.

With regard to the falsification of his application, the appellant argues he made a good faith effort to complete the application with the information available to him at the time. He points to Question 52 of the application which asked "Have you ever had any police contact, been taken into custody or charged with juvenile delinquency?" The appellant checked the "Yes" box. Thereafter, the appellant explained the nature and circumstances surrounding the incident. He also wrote on the application that he was unable to obtain information regarding the charge. However, the appellant identified the police department, municipality, county, and State where the incident took place. The appellant asserts that he was unable to get the particulars of the incident because the paperwork was lost after his family home was foreclosed on. In addition, he asked for the information from the Hazlet Police Department but was denied the records since it was juvenile records.

In response, the appointing authority argues that the appellant's application evidences his evasiveness when answering questions. It points to Question 46 which asked "Have you ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or any other jurisdiction?" The appellant checked the "No" box. All questions on the application applied to adult and juvenile matters. Therefore, the appointing authority argues, the appellant was being evasive by not checking "Yes" when he had police contact, was taken into custody, and charged as a juvenile. In addition, a chart where the applicant had to describe the nature and circumstances of any charges was marked "N/A."

Additionally, the appointing authority asserts it has the discretion to hold diverted records against candidates when considering candidates for employment. The appointing authority alleges the appellant meets the criteria for removal from the eligible list. It points to the Criteria for Removal from the Eligible List Section on the appellant's application. The section states, in part, that if an applicant "Has entered into a conditional discharge agreement or pre-trial intervention program for any offense under 2C:35 or Title 24 (including disorderly persons or petty disorderly persons offenses)" the applicant may be removed from the eligible list. As a result of appellant's participation in a juvenile diversion program, the appointing authority argues it was well within its discretion to remove the applicant from the eligible 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 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.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for, *inter alia*, correction officer titles. Additionally, pursuant to *N.J.S.A. 11A:4-10*, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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, supra*.

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). *N.J.S.A. 2A:4A-48* provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. However, the Commission can consider the circumstances surrounding the appellant's arrest, the fact that the appellant was involved in such activities and whether they reflect upon his character and his ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision.

Additionally, 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. In *Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. 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 or her 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).

Moreover, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an individual from an eligible list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *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.

In this matter, a thorough review of the record indicates the appellant's removal from the subject eligible list is unwarranted. With respect to the appellant's alleged unsatisfactory criminal history, in 2007, when the appellant was fifteen years old, he was charged with 4th degree 2C:17-3B(2)-Criminal Mischief and referred to the juvenile system. The appellant explains that after a verbal altercation with a group of kids, he punched the passenger's side of an oncoming vehicle driven by a member of the group that was heading in his direction. This incident resulted in the appellant entering into a juvenile diversion agreement program where he paid restitution and completed an anger management class. In other words, the appellant was involved in a minor offense when he was a fifteen year old juvenile, and the incident was six years prior to the closing date. Further, this was an isolated event as the appellant has not had any involvement with the police since that occurrence. Also, he has demonstrated rehabilitation as evidenced by his employment with a local bank and completion of the conditions from JCC. *See In the Matter of Richard A. Rizzolo*, Docket No. A-0589-03T5 (App. Div. December 8, 2004) (The Appellate Division upheld the restoration of an eligible to a Fire Fighter eligible list, based on significant evidence of rehabilitation since the appellant's arrests in 1989 and 1990. The Appellate Division specifically noted the appellant's successful completion of the Pre-Trial Intervention program after his 1990 arrest, his gainful employment since 1988, his marriage, his involvement in the community and the positive statement of his employer). Consequently, the appointing authority has failed to establish that the appellant's record is sufficient to support the removal of his name from the subject eligible list.

Further, the appointing authority requested the removal of the appellant's name from the subject eligible list for failing to disclose the charge on his employment application. In this regard, the appointing authority claims the appellant falsified his application by failing to provide a complete history of his criminal background. Though the appellant did not accurately answer every

question pertaining to the charge, the appellant provided the material facts surrounding the charge. *See In the Matter of Lance Williams* (CSC, decided May 7, 2014) (Although appellant may have skipped some questions on his employment application, he did provide all the material facts relevant to review his candidacy as he attached his municipal court disposition sheet with his application). The appellant provided the municipality, police department, county, and state where the charge took place. He checked the "Yes" box pertaining to juvenile delinquency, and he explained the nature and circumstances surrounding the charge. Therefore, there is no indication that the appellant attempted to conceal the fact he had been arrested as a juvenile.

Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name restored to the list for Correction Officer Recruit (S9988R), Department of Corrections, 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 4TH DAY OF FEBRUARY, 2015

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