

B-32

STATE OF NEW JERSEY

In the Matter of Anthony Murgolo,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-546

List Removal Appeal

ISSUED: FEB 09 2015 (SLK)

Anthony Murgolo, represented by David J. DeFillippo, 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 23, 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 indicating that he was charged with aggravated assault in 2007 which was downgraded to simple assault and conditionally disposed of through a diversion program. 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 describes the 2007 incident as a typical high school fight where he did not want to fight, but in fear that he was about to be attacked, he delivered one punch to the individual who had challenged him to a fight. After the punch, the appellant maintains that he left the scene, but fully cooperated when later contacted by the police about the event. He presents that the incident ultimately resulted in him being charged with a juvenile complaint alleging simple assault. The appellant states that the alleged victim's injuries were extremely

minor, that the matter was diverted to a Juvenile Conference Committee where he appeared before local citizens and not in a court, and that the matter was dismissed without the need of paying a fine or performing community service after a three month continuance. He provides that the circumstances are such not to require the removal of his name from the eligible list and bar his future employment in law enforcement as no weapons were used, the victim suffered only minor injuries, and he has reconciled with the victim. Further, the appellant highlights that the offense occurred seven years ago when he was only 16 years old. Additionally, he states that this was an isolated event, that he has not been arrested or convicted of any crime since the incident, and that he has demonstrated that he has been rehabilitated as he graduated from high school, earned an Associate's degree, and maintains employment. He also submits several letters from individuals, including the alleged victim, who vouch for his character.

In reply, the appointing authority questions the authenticity of the correspondence from the alleged victim. Specifically, it highlights that in one of the statements the victim's last name is misspelled and his entire first name is signed while in another statement the victim uses his nickname instead of his full first name for the signature and the signatures in the two statements do not match. Therefore, the appointing authority concludes that at least one of the victim's statements is forged. Further, the appointing authority argues that there are discrepancies between the appellant's statements to police at the time of the incident and what he indicated in his appeal certification describing the event. As such, it maintains that the Commission should only rely on the accuracy of the police report, in which the victim told the police that the appellant was part of a fight club that targets other students at random. The report also indicates that witnesses stated that the appellant punched the victim in the face and knocked him to the ground and that the appellant got on top of the victim and started punching him in the back of the head. Further, the victim was transported to the emergency room as he lost consciousness during the altercation and his lip required several stitches. The appointing authority also states that the appellant has not been rehabilitated. It presents that the appellant has been charged twice since the 2007 assault. Specifically, the appellant was charged with theft by unlawful taking for removing \$5,000 of aluminum roofing from CR Construction in 2010 which was dismissed and that he was charged with possession of alcohol in 2013 which was also dismissed. The appointing authority reiterates that the appellant participated in a juvenile diversion program and, given the proximity of his completion of that program to the time his name was certified for appointment consideration, that this should automatically disqualify him from consideration.

In response, the appellant admits that he did in fact sign the victim's statement that was initially submitted to the Commission in support of his appeal. He submits certifications from both the victim and himself that represent that the appellant signed the victim's name on the victim's statement with the victim's prior

knowledge and consent, and while they both admit that this action was unwise and short-sighted, they both explain that the appellant did so because the victim was in Florida at the time and the appellant was pressing to timely submit his appeal. Further, the appellant maintains that the appointing authority's references to a 2010 theft charge and 2013 alcohol charge are irrelevant as he was not informed that these were used as a basis to remove his name from the list. Consequently, the appellant argues that no negative inferences can be raised from these two incidents as it relates to the appellant's suitability for employment as a Correction Officer.

In further reply, the appointing authority asserts that despite the victim and the appellant's attempts to explain why the appellant submitted a document where he signed the victim's name, forging a document is not appropriate or acceptable and this action only further demonstrates that the appellant is unsuitable for the position because his judgment is questionable. The appointing authority argues that the appellant's 2007 aggravated assault charge, his inaccuracy in reporting and downplaying the facts regarding the 2007 incident, and his forging of a document illustrate that he cannot be trusted to be honest in writing reports and reporting significant events as a Correction Officer. Further, it presents that when it called the victim and advised that his signature was forged, the victim never advised that he gave permission to the appellant to sign his signature. It also argues that contrary to the appellant's attorney's statement, it has not raised new issues on appeal by mentioning the 2010 charge against the appellant for theft and the 2013 charge for possession of alcohol as the appointing authority presented these charges in response to the claim that the 2007 incident was an isolated event and that the appellant has been rehabilitated. The appointing authority maintains that the appellant's submission of a forged document is only the latest evidence that the appellant has not been rehabilitated.

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).

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 a diversionary 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).

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. In May 2007, at age 16, the appellant was initially charged with aggravated assault and the charge was later downgraded to simple assault, a disorderly persons offense. The matter was diverted to a Juvenile Conference Committee and eventually dismissed. However, it cannot be ignored that the police report includes statements from the victim and other witnesses indicating that the appellant was looking to start a fight with the victim, punched the victim causing him to fall on the ground and lose consciousness, and the appellant was on top of the victim punching him in the back of the head. The police officer responding to the incident observed that the victim had a laceration to the left side of his lip as well as bruising and swelling to the left side of his jaw and had the victim transported to

the emergency room. Although the appellant indicates in his appeal submissions that this was a minor incident and that the victim only incurred a minor cut to his lip, the police report documented that the victim was seriously injured resulting in the appellant being charged, and, after a three month diversionary program, the charges being dismissed. While the appellant argues that the incident took place seven years ago while a juvenile at age 16, it was clearly not an isolated event as he was charged with theft in 2010 and possession of alcohol in 2013. Further, the appellant's admission that he signed the victim's signature on a document that was represented as the victim's signature and submitted to the Commission in support of his appeal, regardless of his reasoning, demonstrates that the appellant has not been rehabilitated as he lacks the judgment necessary for the position.

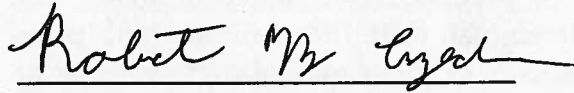
Additionally, while the appellant stated on his application regarding the theft charge that, "A[n] associate of mine loaded stolen material in my truck which I was unaware of" and both the theft and possession of alcohol charges were dismissed, the fact that the appellant has continued to associate with individuals and engage in situations which have led to negative interactions with the law provides evidence of the appellant's questionable judgment. 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). *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. 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 4th DAY OF FEBRUARY, 2015**



**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: Anthony Murgolo
David J. DeFillippo, Esq.
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

August 11, 2014

Anthony Murgolo

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.

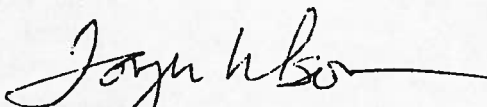
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals & Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. 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.

Address all appeals to:

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

Sincerely,



T.D. 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