

B-35



STATE OF NEW JERSEY

In the Matter of Rianni Rodriguez,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

DOP Docket No. 2014-2512

List Removal Appeal

ISSUED: FEB 11 2015 (JET)

Rianni Rodriguez, represented by Charles M. Grossman, Esq., appeals the attached decision of the former Division of Classification and Personnel Management (CPM),¹ which upheld the removal of her name from the Correction Officer Recruit (S9987M), Department of Corrections, eligible list on the basis of an unsatisfactory criminal history.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on May 23, 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 falsification of her employment application. Specifically, the appointing authority asserted that on February 1, 2009 the appellant was charged with shoplifting \$200 to \$500 (4th degree) when she was 15 years old in violation of *N.J.S.A. 2C:20-11c(3)* (dismissed). It is noted that the appellant completed a diversionary program called "Project Pride." On appeal to CPM, the appellant asserted, among other things, that her name should be restored to the eligible list. CPM determined that the appointing authority had presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal, the appellant asserts that her name should be restored to the eligible list. Specifically, the appellant contends that she provided sufficient

¹ Now Agency Services

information regarding the February 1, 2009 incident on the employment application. She adds that she did not provide all of the information as she had difficulty remembering the incident and her mother had to assist her with remembering the details. Further, the appellant indicates that the appointing authority should have been able to conduct a proper background investigation based on the information she provided in the employment application and there was no intention on her part to mislead anyone. She also provided the records of the incident from Essex County juvenile court to the appointing authority for review. Thus, the appellant states that the appointing authority improperly removed her since she did not falsify the employment application. In addition, the appellant avers that she was only 15 years old at the time the incident. The appellant explains the details surrounding the incident that occurred on February 1, 2009. In this regard, the appellant states that she and her sister joined several male individuals and they drove to the Willowbrook Mall. The appellant went to a store in the mall and purchased a book bag and she was later charged with shoplifting since she could not produce a receipt. The appellant adds that she did not have an attorney at the time and she agreed to her mother's recommendation to complete a diversionary program called "Project Pride." The appellant contends that she has not been arrested since the February 1, 2009 incident for any other criminal matter. The appellant adds that she is a high school graduate and she obtained a high score on the Civil Service examination for the subject title. Moreover, the appellant asserts that the shoplifting charge is a minor offense and should not prelude her from becoming a Correction Officer Recruit. The appellant also provides letters of recommendation from various individuals in support of her arguments.

In response, the appointing authority maintains that the appellant's name should be removed from the eligible list. Specifically, the appointing authority asserts that the appellant did not properly disclose information in response to the questions on the employment application. In this regard, in response to question 46 on the employment application, "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 "no" and indicated "shop lifting, 2/1/2009 (dismissed). Further, in response to question 51 on the employment application, "have you ever had any police contact, been taken into custody, or charged with juvenile delinquency, the appellant checked "yes," and indicated "my case was dismissed" [and] "shoplifting on 2/1/2009 (dismissed)." The appointing authority contends that the appellant failed to list on the employment application that she participated in a diversionary program. The appointing authority adds that the appellant had adequate time to properly complete the employment application as it is dated July 5, 2013 and she did not submit it until she attended preemployment processing on July 10, 2013. In addition, the appellant submitted documentation from Essex County juvenile court indicating that she was previously arrested. The appointing authority explains that the appellant was required to properly complete the employment application so it could properly conduct a background

investigation. As such, the appellant falsified the employment application. Moreover, the appointing authority contends that it may consider juvenile records when evaluating candidates for potential employment. As such, the appellant's participation in the diversionary program automatically disqualifies her as a candidate despite that she was charged as a juvenile.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)(4), provides 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. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relate to the position of Correction Officer Recruit. 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. See *N.J.A.C.* 4A:4-4.7(a)4ii; see also, *N.J.S.A.* 2C:52-27(c). *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.

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 eligible's name from an employment list when he or she has made a false statement of 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 the instant matter, the record reflects that the appellant was arrested and charged with fourth degree shoplifting when she was a juvenile. In this regard, 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). However, *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. Accordingly, the disability arising under *N.J.A.C. 4A:4-4.7(a)4* as a result of having a criminal conviction has no applicability in the instant appeal.

Nonetheless, the appellant's juvenile offense may be considered among the "other sufficient reasons" to remove her from the subject eligible list if the offense adversely relates to the employment sought. See e.g., *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). *N.J.A.C. 4A:4-4.7(a)1* recognizes that an eligible may be removed from an eligible list for any of the causes listed in *N.J.A.C. 4A:4-6.1* for denying eligibility or appointment, including other sufficient reasons. 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.

In the appellant's case, it appears that, while the charge is a serious offense, the incident was an isolated event, which occurred approximately four years prior to the certification of her name from the subject eligible list. Further, it must be emphasized that the appellant was only 15 years old at the time and the charge was dismissed once she completed the diversionary program. Moreover, the record does not demonstrate further adverse involvement with the law since that time. Under these circumstances, the Commission does not find sufficient cause to remove the appellant's name from the subject eligible list.

However, it is clear that the appointing authority, in its discretion under *N.J.A.C. 4A:4-4.8*, can take a candidate's background into account in deciding whether or not to bypass the candidate on an eligible list. See *In the Matter of William Oakley* (MSB, decided June 20, 2007). In the present case, the appellant's record presents a sufficient basis to bypass her on the eligible list. See *N.J.A.C. 4A:4-4.8(a)3*. While the appellant asserts that her name should not be removed from the subject eligible list because the aforementioned shoplifting charge occurred

when she was a minor, was an isolated event, and was one from which she has since rehabilitated, the appellant's underlying arrest cannot be ignored. As noted above, the Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. Further, the Commission observes that the appellant does not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

In regard to the appointing authority's argument that the appellant falsified the employment application, the Commission does not find that argument persuasive. The appellant clearly disclosed relevant information on the employment application for the appointing authority's review. In this regard, she clearly listed in response to the questions that she was charged with shoplifting on February 1, 2009. Although the appellant failed to list that she participated in a diversionary program, that omission did not prevent the appointing authority from adequately conducting a background check. The appointing authority was able to determine that the appellant was charged with shoplifting and participated in a diversionary program based on the information she provided in the employment application. Moreover, the appointing authority does not provide any arguments that it did not have the opportunity to investigate the appellant's background or provide any substantive information to show that her name should be removed from the eligible list. Therefore, the Commission is satisfied that the appellant adequately completed her employment application and disclosed relevant information for the appointing authority's review.

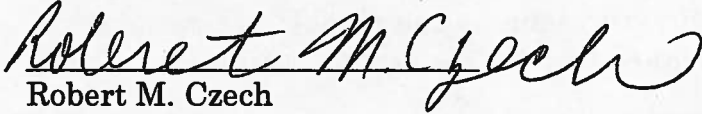
Accordingly, while the Commission finds insufficient reason to remove the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections, eligible list, and restores her name to the May 23, 2013 certification, it finds that her background provides sufficient cause to record her as bypassed on that certification.

ORDER

Therefore, it is ordered that this appeal be granted, but that the appellant's name be recorded as bypassed for appointment on the May 23, 2013 certification for Correction Officer Recruit (S9987M), Department of Corrections.

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

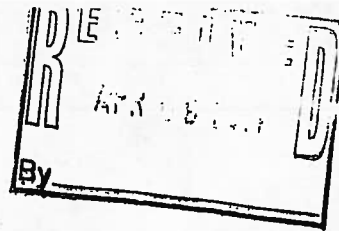
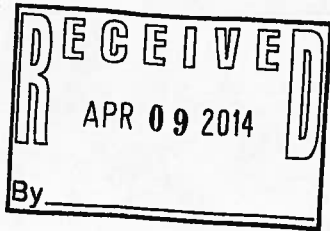


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Robert M. Czech
Chair/Chief Executive Officer

April 4, 2014

Charles M. Grossman	IMO: Rianni Rodriguez Title: Correction Officer Recruit Symbol & Rank: S9988R Jurisdiction: Corrections Certification Number: JU13D01 Certification Date: May 23, 2013
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Initial Determination: R2 - Remove – 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. N.J.A.C. 4A:4-4.7(a)4*, which permits the removal of an eligible candidate's name from the eligible list for 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 and 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. Address all appeals to: Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Written Record Appeals Unit, PO Box 312, Trenton, NJ 08625-0312.

Sincerely,

Valerie Stutesman, IPMA-CP
Leader/Manager

c: Jennifer Rodriguez, NJ Dept. of Corrections Custody Recruitment

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