

B-61



STATE OF NEW JERSEY

In the Matter of Dana Palumbo,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

DOP Docket No. 2015-371

List Removal Appeal

ISSUED: MAR 09 2015 (JET)

Dana Palumbo 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 (S9988R), 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 an unsatisfactory criminal history. Specifically, the appointing authority asserted that on March 7, 2007 the appellant was charged with Possession/Marijuana in violation of N.J.S.A. 2C:35-10a(4) (dismissed). It is noted that the appellant was fined and she received a conditional discharge as a result of her participation in a diversionary program. 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 she regrets her previous actions and she has learned from her mistakes. The appellant explains that the charges against her were the direct result of mistakes she made when she was young. Moreover,

¹ Now the Division of Agency Services

the appellant contends that she has determined to pursue a career as a Correction Officer and she has put forth serious effort into achieving that goal in the last few years.

In response, the appointing authority maintains that the appellant's name should be removed from the eligible list. Specifically, the appointing authority asserts that it may consider criminal charges when evaluating candidates for potential employment. The appointing authority adds that the charges were brought against the appellant less than ten years prior to when her name was certified on the eligible list. Thus, the appellant is automatically disqualified as a candidate despite that she participated in a diversionary program. Moreover, the appointing authority states that its primary goals are to select candidates who exhibit respect for the law in order to effectively manage the day-to-day operations of a prison system.

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 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 law enforcement, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment 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*. In *In the Matter*

of *J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal to the former Merit System Board (Board) 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 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.

Additionally, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove 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. Moreover, pursuant to *N.J.S.A.* 2C:36A-1, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. See *State v. Marzolf*, 79 *N.J.* 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's arrest and Conditional Discharge could still properly be considered in removing her name from the subject eligible list.

In the instant matter, the appellant argues that her name should be restored to the eligible list. She argues that she has learned from her prior mistakes and she regrets her prior behavior including her arrest. While it is commendable that the appellant has apparently changed her behavior since her arrest in March 2007, less than 10 years had elapsed from the time she was arrested to the time she applied for the subject position. Thus, given the nature of the incident and charges, not enough time has elapsed in order to declare that the appellant has sufficiently rehabilitated herself. Although the arrest appears to be an isolated incident, the appellant was an adult at the time of her arrest. Further, the appellant does not adequately explain her involvement with the charges. Additionally, the appellant has not provided any specific evidence of rehabilitation. In this regard, the nature of the charges clearly adversely relate to the title of County Correction Officer. Individuals in this title must work closely with individuals who have criminal records and present an appropriate example. Further, the Commission is mindful of the high standards that are placed upon law enforcement personnel. In this regard, it is recognized that a Correction Officer is a law enforcement employee who must help keep order and holds a highly visible and sensitive position within the community. 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 prison guards to present a personal background that exhibits respect for the law and rules. Clearly, the appellant's criminal record is inimical to that goal.

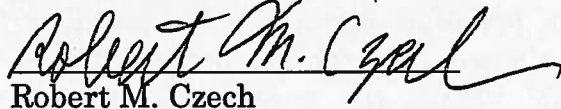
Accordingly, based on the totality of the record, the appointing authority has submitted sufficient evidence to support the removal of the appellant's name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections.

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 MARCH, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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and
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STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 313
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Robert M. Czech
Chair/Chief Executive Officer

July 14, 2014

Dana Palumbo

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.

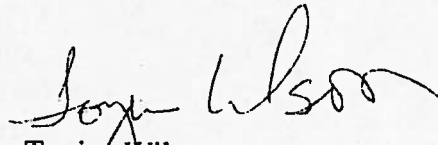
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals & Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in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

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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