

B-25



STATE OF NEW JERSEY

In the Matter of Jennifer Fernandez,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-340

List Removal Appeal

ISSUED: APR 07 2015 (JET)

Jennifer Fernandez 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 November 9, 2009, the appellant was charged with shoplifting (petit larceny and criminal possession of stolen property) in violation of sections 155.25 and 165.40 of the New York Penal Law (dismissed). It is noted that the appellant 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 did not actually commit the crime that led to her arrest in November 2009. Specifically, the appellant explains that at

¹ Now the Division of Agency Services

the time she was arrested, she was shopping with her friend in Manhattan and she was only 20 years old at the time of the incident. The appellant adds that, at some point while they were shopping, she agreed to hold a bag for her friend that contained unpaid merchandise. The appellant avers that she was unaware the bag contained unpaid merchandise and she took the blame for her friend's inappropriate actions. In this regard, she was simply in the wrong place at the wrong time and she has not been involved with any other criminal incidents since 2009. Moreover, the appellant contends that she completed community service and the charges against her were dismissed. The appellant adds that she is currently employed as a Loss Prevention Specialist and she previously served as a Special Police Officer for the Cliffside Park Police Department. She also obtained a SORA license and passed a security clearance for a federal position. In support, the appellant provides a letter of recommendation from Thaddeus Ware, a retired Senior Correction Officer.

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. The appointing authority adds that the appellant provides different explanations for her arrest in her employment application and her appeal and it appears that the charges against her were not sealed. Further, it is of no moment that the appellant may have been hired as a law enforcement officer in another jurisdiction as each appointing authority has separate hiring practices. Moreover, the appointing authority asserts 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*.

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). Although the incident in question took place in New York, not New Jersey, and was adjudicated under New York law, similar principles can be applied. Thus, the appellant's arrest and conditional discharge subject to completing a diversionary program 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 took the blame for her friend at the time of the incident and she has not been involved with any other criminal incidents since November 2009. 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. In this regard, the explanation the appellant provided on appeal, that she took the blame for her friend at the time of the incident, is not persuasive and is not sufficient to restore her name to the eligible list. Although the appellant provides some evidence of her

rehabilitation, it is not sufficient to establish that she has been rehabilitated. While it is commendable that the appellant has apparently changed her behavior since her arrest in November 2009, less than four 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. In this regard, the nature of the charges clearly adversely relate to the title of Correction Officer Recruit. Even if the charges were sealed as the appellant contends, the charges were also listed on her employment application. As noted above, the appellant's arrest and participation in a diversionary program could still be considered in removing her name from the subject eligible list. Moreover, the appellant's prior law enforcement experience does not insulate her from being removed from the eligible list for an unsatisfactory criminal background. 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.

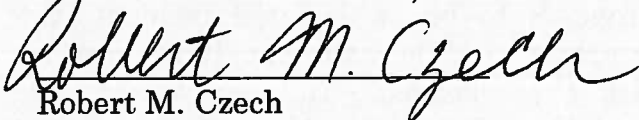
Accordingly, based on the totality of the record, the appointing authority has submitted sufficient evidence to support the removal of the appellant's name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections.

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 1st DAY OF APRIL, 2015



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

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**c: Jennifer Fernandez
Jennifer Rodriguez
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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

July 21, 2014

Jennifer Fernandez

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.

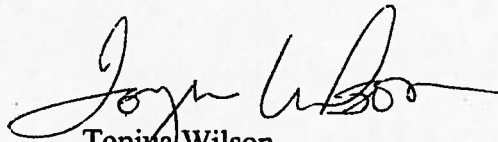
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947,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

Jennifer Fernandez
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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

