

B-6



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Devin Robinson,
Correction Officer Recruit (S9988R),
Department of Corrections

List Removal Appeal

CSC Docket No. 2015-443

ISSUED: **MAY 21 2015** (WR)

Devin Robinson appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that the appointing authority had presented a sufficient basis to remove his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, due to his unsatisfactory background report.

The appellant, a nonveteran, took the open competitive examination for Correction Officer Recruit (S9988R), Department of Corrections, achieved a passing score, and was ranked on the subsequent eligible list. This list promulgated on May 23, 2013 and expires on May 22, 2015. The appellant's name was certified on May 23, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list because he had an unsatisfactory background report. Specifically, it asserted that the appellant had been terminated from three different jobs in the past three years. The appointing authority further alleged that the appellant was "seen in Facebook pictures making an identified gang hand sign" and was also "pictured with others who [were] using noted gang hand signs." In support, it submits his application and screenshots of his Facebook account.

On appeal to CPM, the appellant denied being affiliated with any gangs, stated that the individuals he was photographed with are no longer his associates, and noted that he has no criminal record. He also asserted that he has learned from his previous mistakes, including the ones related to his prior employment.

Nevertheless, CPM determined that the appointing authority had presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant reiterates the arguments he made to CPM. Additionally, he refers to a Volkswagen commercial which he argues explains the hand signals he was displaying in one of the aforementioned photographs on Facebook. The commercial depicts a man making a "V" with the index and middle finger with his right hand. In the aforementioned photograph, the appellant made a "V" with the middle and ring fingers of his right hand. It is noted that the appellant commented, "Throwing up the V. Dubbs" on the aforementioned photograph.¹

In response, the appointing authority reiterates that the appellant has an unsatisfactory employment record because he disclosed on his application that he had been separated from four recent employers under unfavorable circumstances, three of which it contends "share some of the same job responsibilities expected of a Correction Officer Recruit." In this regard, it states that the appellant indicated the following adverse employment history in his employment application:

Employer	Job Title	Dates of Employment	Reason for Leaving
Tully House	Operations Counselor	August 2012 to October 2013	Terminated for missing mandatory training. ²
Cambridge Security	Security Guard	May 2012 to June 2012	Terminated for oversleeping on break
Newark Renaissance House	Counselor	September 2009 to February 2011	Terminated for leaving residents unsupervised
Staples	Sales Representative	September 2004 to February 2006	Terminated for unsafe usage of supplies

Thus, the appointing authority argues that the appellant should be removed from the eligible list because his "employment history reflects an individual who is unreliable, or unwilling to follow directions," attributes which are not acceptable for a Correction Officer Recruit.

¹ It is noted that, according to the Urban Dictionary, the "V Dubs" is a slang term for Volkswagen.

² The appellant also indicated that he was suspended for damaging a company vehicle in September 2012.

Furthermore, the appointing authority reiterates that the appellant's Facebook pictures of him displaying a hand signal for the Villains gang and posing with individuals making other gang hand signals, also warrants his removal from the eligible list. In this regard, the appointing authority states that it has a "zero-tolerance policy" against candidates being a gang member, associating with gangs or giving the appearance of associating with gangs, as gangs jeopardize the safety of its facilities and staff. The appointing authority observes that the appellant was 27 years old when he applied for the subject position and was accordingly old enough to appreciate that associating with "suspect organizations" would negatively affect his candidacy. In support, the appointing authority submits the appellant's employment application, the aforementioned photographs and a New York City Police Department manual that explains the hand signals that the appellant and his associates were making in the photographs.

CONCLUSION

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. *See also*, *N.J.A.C.* 4A:4-4.7(a)11. 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 appointment. Moreover, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. *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 appointing authority asserts that the appellant's termination from four employers in the past 10 years warrants his removal from the subject eligible list. On appeal, the appellant states that he has learned from his mistakes. Nevertheless, while these grounds individually may not be sufficient to remove his name from the eligible list, they are sufficient when taken together, especially considering that the appellant bears the burden of proof in this matter. Moreover, the Commission observes that the appellant was terminated from employment at Tully House several months after his name had been certified from the subject eligible list and his termination from Cambridge Security occurred less than one year before his name. Additionally, 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 Officer Recruits, 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

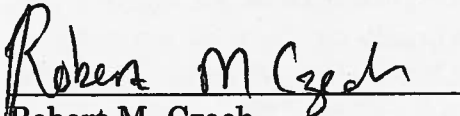
(App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also *In re Phillips*, 117 N.J. 567 (1990). Accordingly, the Commission finds that the appellant's employment history is unsatisfactory and upholds his removal from the list on that basis. Since the Commission has removed the appellant based on his unsatisfactory employment history, it need not address his alleged gang affiliation. However, the Commission notes that an affiliation with a gang and gang members, as the appointing authority noted, could jeopardize the safety of its prisons and such affiliation does support removing an eligible from an employment list. Accordingly, the appellant has failed to meet his burden of proof in the matter and a sufficient basis exists in the record to remove 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 19th DAY OF MAY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Records Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Devin Robinson
James Mulholland
Kenneth Connolly



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

July 21, 2014

Devin Robinson

Title: Correction Officer Recruit
Symbol: S9988R
Jurisdiction: Department of Corrections
Certification Number: JU13D01
Certification Date: 05/23/13

Initial Determination: Removal – Unsatisfactory background report

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:4-6.1 a(9)*, which permits the removal of an eligible candidate's name from the eligible based on other sufficient reasons.

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 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.

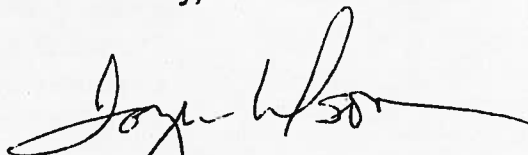
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947,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

Devin Robinson
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Address all appeals to:

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

Sincerely,

A handwritten signature in black ink, appearing to read "T.D. Wilson", with a long horizontal flourish extending to the right.

T.D. Wilson
Human Resource Consultant
State Certification Unit

For Joe M. Hill Jr. Assistant Director
Division of Classification & Personnel Management

C James Mulholland, Director
File