



CSC  
B-37

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Vedaliz Serrano,  
Correction Officer Recruit (S9988R),  
Department of Corrections

List Removal Appeal

CSC Docket No. 2015-338

ISSUED: MAY 26 2015 (EG)

Vedaliz Serrano, represented by Wolodymyr P. Tyshchenko, Esq., appeals the attached determination of the former Division of Classification and Personnel Management (CPM)<sup>1</sup> which found that the appointing authority had presented a sufficient basis to remove her name from the Correction Officer Recruit (S9988R), Department of Corrections (DOC) eligible list due to an unsatisfactory background report.

The subject eligible list promulgated on May 23, 2013 and expires on May 22, 2015. On February 11, 2014, the DOC notified the appellant that her name was being removed from the eligible list on the basis of an unsatisfactory background report. Specifically, it asserted that on her employment application, the appellant indicated that she had been found guilty of shoplifting in 2004. The appellant appealed the removal of her name from the eligible list to CPM and submitted records indicating that the arrest occurred in Florida while she was a juvenile. However, CPM upheld the appointing authority's request to remove the appellant's name from the subject eligible list.

On appeal, the appellant argues that she mistakenly indicated that she had been convicted of shoplifting. The appellant explains that her arrest as a juvenile occurred on July 15, 2005 while she was 17 years old. Additionally, the appellant claims her arrest for a delinquent act in Florida was roughly equivalent to a petty

<sup>1</sup> Now the Division of Agency Services.

Disorderly Persons Offense in New Jersey. On July 25, 2005, the matter was disposed of via a diversionary program prior to a petition for delinquency ever being filed. Within two months, the case was closed by dismissal and without any adjudication of delinquency. In this regard, the appellant contends that she has never been convicted of any crime or offense and does not have a criminal record which adversely relates to the employment sought.

In response, the DOC reiterates that the appellant should be removed for an unsatisfactory background report and argues that her removal is consistent with its preemployment processing criteria. It asserts that it can review the appellant's juvenile records and points out that the charge against her was disposed of through a diversionary program. It adds that a juvenile record, whether sealed or expunged, can still provide a disability to a candidate seeking a position in law enforcement. In this regard, the appointing authority argues that the appellant's actions were considered criminal behavior in both New Jersey and Florida. As such, any adverse interaction with law enforcement relates to employment as a Correction Officer Recruit. Moreover, DOC states that it strives to select candidates who exhibit a good work ethic and respect for the law as this is imperative to effectively manage the day-to-day operations of a correctional system, and argues that the appellant is not a suitable candidate.

In reply, the appellant reiterates that she has no criminal record. Further, the appellant questions whether the appointing authority may use a juvenile record in its decision making process.

### CONCLUSION

*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. 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 Civil Service Commission (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 appointment.

Initially, the DOC indicated that the appellant was removed consistent with its preemployment processing criteria. However, it is noted that the Commission must decide each list removal appeal on the basis of the record presented, and is not bound by the criteria utilized by the appointing authority. *See e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

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. *Dugan v. Police Department, City of Camden*, 112 N.J. Super. 482 (App. Div. 1970), cert. denied, 58 N.J. 436 (1971). Thus, the appellant's juvenile arrest records were properly considered by the appointing authority, a law enforcement agency, for purposes of making a hiring decision. 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. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

Moreover, participation in a diversionary 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 Pre-Trial Intervention (PTI) diversionary 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 the juvenile diversionary program could still be properly considered in removing his or her name from the subject eligible list, not based on her criminal record, but rather, based on an unsatisfactory background. 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 this matter, a thorough review of the record indicates that the appellant's removal from the (S9988R) eligible list for Correction Officer Recruit is not warranted. With respect to the appellant's background, the 2005 arrest occurred when she was 17 years old, and she was charged with shoplifting. The case was referred to a non-adjudicatory diversionary program and the matter was ultimately dismissed. This incident occurred eight years prior to the certification of the appellant's name to the appointing authority. Further, this was an isolated event as the appellant has not been arrested or convicted for any criminal activity since the occurrence. Therefore, taking into consideration that the charge against the appellant was minor and the incident took place in 2005, when she was 17 years old, the totality of the record does not provide a sufficient basis to remove the appellant's name from the subject eligible list based on her criminal record.

Accordingly, the appellant has met her burden of proof in this matter and the appointing authority has not shown sufficient justification for removing her name from the eligible list for Correction Officer Recruit (S9988R), Department of

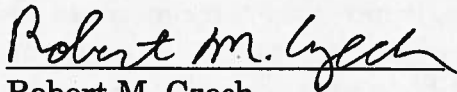
Corrections. As the subject list expires on May 22, 2015, should the appellant not be certified prior to that time, the subject list shall be revived at the time of the next certification for Correction Officer Recruit to allow for her to be considered at that time.

**ORDER**

Therefore, it is ordered that this appeal be granted, and the appellant's name restored to the list for Correction Officer Recruit (S9988R), Department of Corrections, for prospective employment opportunities only.

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 20TH DAY OF MAY, 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: Wolodymyr P. Tyshchenko, Esq.  
Vedaliz Serrano  
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

July 14, 2014

Vedaliz Serrano

**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.

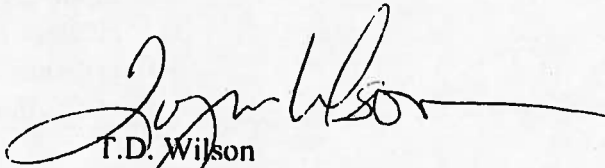
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947,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

Vedaliz Serrano  
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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