



**STATE OF NEW JERSEY**

In the Matter of Tamika Farlow,  
Correctional Police Officer  
(S9988U), Department of Corrections

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-1382

List Removal Appeal

**ISSUED: FEBRUARY 22, 2019 (JET)**

Tamika Farlow, represented by Juan C. Cervantes, Esq., appeals the removal of her name from the Correctional Police Officer (S9988U), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988U), achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on March 31, 2017. 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 record. Specifically, the appointing authority asserted that in 1998, the appellant was charged and later convicted in 2000 of Credit Card Theft – Fraudulent Use (3<sup>rd</sup> degree) in violation of *N.J.S.A. 2C:21-6H*. As a result, the appellant completed Pre-Trial Intervention, was credited for one day of jail time, and received one year of probation. In support, the appointing authority submits documentation from the Superior Court, Law Division, Passaic County, indicating that the appellant was convicted of the above listed charges. Additionally, the record reflects an Expungement Orders dated August 2, 2010 and October 31, 2018 from the Superior Court, Law Division, Passaic County which included the above charges as well as an April 14, 2008 charge of Harassment in violation of *N.J.S.A. 2C:33-4a*. The record also reflects a letter dated April 7, 2010 from the Superior Court, Essex County, which indicates that the appellant was sentenced to a five-year collections case on September 20, 2005, that all fines were paid in full and the case was discharged on November 21, 2015.

On appeal to the Civil Service Commission (Commission), the appellant asserts that her conviction does not adversely relate to the subject position. Specifically, the appellant contends that she was only 19 years old when she was initially charged, and her record was expunged in 2010. The appellant adds that she was only convicted of a 3rd degree crime; the appellant was not in possession of the card at the time of the incident; she did not receive any goods from its use; there were multiple individuals who were charged with fraudulently using the same credit card; and the incident occurred more than 20 years ago. Moreover, the appellant states that she completed probation and has not been involved in any other criminal activity.

Despite being provided with the opportunity, the appointing authority did not provide a response.

### 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 Police Officer. 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*, 261 *N.J. Super.* 401 (App. Div. 1992). However, *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div.

2006), the Appellate Division remanded a list removal appeal 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 former Merit System 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*.

*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 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 subject to completing a diversionary program could still properly be considered in removing her name from the subject eligible list.

In this matter, the appellant argues that her name should be restored to the list as she was initially charged in 1998 when she was 19 years old. Although the charges against the appellant were serious and was an adult at the time the incident occurred, the charges have been expunged along with other remote-in-time charges. Moreover, more than 20 years has passed since the initial incident and more than 10 years has passed since the harassment incident. As such, sufficient time has now passed to show that the appellant has been rehabilitated. The Commission finds it commendable that the appellant has apparently changed her behavior for the better. Based on the passage of time, the fact that the appellant has changed her behavior for the better, and that there is sufficient evidence of her rehabilitation, the Commission finds that there is sufficient justification to restore the appellant's name to the list.

Accordingly, under these circumstances, the appellant has met her burden of proof in this matter and has shown sufficient justification for restoring her name to for Correctional Police Officer (S9988U), Department of Corrections eligible list.

**ORDER**

Therefore, it is ordered that this appeal be granted.

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 20<sup>th</sup> DAY OF FEBRUARY, 2019



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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