



**STATE OF NEW JERSEY**

In the Matter of J [REDACTED] V [REDACTED],  
Correctional Police Officer (S9988V),  
Department of Corrections

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

CSC Docket No. 2019-1693

List Removal Appeal

**ISSUED: APRIL 26, 2019 (JET)**

J [REDACTED] V [REDACTED] appeals the removal of his name from the Correctional Police Officer (S9988V), Department of Corrections eligible list on the basis of an unsatisfactory employment record and an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988V), which had a closing date of May 31, 2017, achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on June 15, 2018. In disposing of the certification, the appointing authority requested the removal of the appellant’s name from the eligible list. Specifically, the appointing authority asserted that on April 2, 2014, the appellant was charged with Disorderly Conduct – Improper Behavior in violation of *N.J.S.A. 2C:33-2A(2)* (dismissed). It is noted that the appellant received a conditional discharge as a result of his participation in a diversionary program. The appointing authority also indicated that the appellant has an unsatisfactory employment record as he was terminated from various jobs including the Seymour Wasserstrum Law Office for attendance reasons; Bruni’s restaurant; and Giordanos Recycling. The appointing authority also asserted that the appellant quit his job at Allied Universal after less than two months of employment and quit his job at AJM Packing Corp after less than one month.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he made a mistake when he was 15 years old and the charges against him were dismissed. The appellant contends that it is his dream to become a law

enforcement officer as his father served as a Correction Officer for over 23 years. The appellant adds that the disorderly conduct was the result of defacing some boxes with graffiti when he was in high school. He also explains that he had a number of jobs in high school and he left for better positions. Moreover, the appellant states that, if he is provided the opportunity, he would serve as a Correctional Police Officer with honor and integrity. The appellant provides letters of recommendation in support of his appeal.

In response, the appointing authority asserts that it has discretion to remove candidates when their record includes a conviction of a disorderly persons offense within seven years of their name appearing on the list. The appointing authority adds that the appellant's employment history includes disciplinary action as a result of his job performance and attendance, and as such, his employment record demonstrates he is unacceptable for the position. The appointing authority explains that law enforcement candidates must be able to follow the rules in order to ensure a safe and secure environment, and the appellant's background is inconsistent with those standards. Moreover, the appointing authority asserts that its 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 Correctional 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, supra*.

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, because such records are necessary to the proper and effective functioning of a police department. *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 disclosed to the appointing authority, when requested 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, 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 his name from the subject eligible list.

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.

In this matter, it is clear that the appellant's juvenile offense adversely relates to the employment sought. The record indicates that the appellant was arrested as a juvenile in 2014. Although the appellant has provided some information to show that he has been rehabilitated, and explains that he has not been charged with any other incidents since that time, such explanations are not sufficient to explain his involvement in the incident. It cannot be ignored that the

incident occurred only three years prior to the closing date of the examination. As such, not enough time elapsed to show that he has been rehabilitated, especially in light of his employment record which includes disciplinary action as well as evidence of non-continuous employment. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correctional Police Officers 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 appointing authority has presented sufficient cause to remove his name from the eligible list for Correctional Police Officer (S9988V). However, the removal in this matter does not prevent the appellant from applying for any similar positions in the future, and, given the nature of the incident, evidence of continued rehabilitation and the further passage of time, such a background will be insufficient to remove him from a future similar list.

### 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 24<sup>th</sup> DAY OF APRIL, 2019



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