



B-53

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of David Greenwald,
Correction Officer Recruit (S9987M),
Department of Corrections

CSC Docket No. 2015-1348

Request for Reconsideration

ISSUED: APR - 2 2015

(SLK)

David Greenwald, represented by Michael L. Prigoff, Esq., requests reconsideration of the attached decision rendered on July 30, 2014, which granted his appeal to restore his name to the eligible list for Correction Officer Recruit (S9987M), Department of Corrections, but ordered that his name be recorded as bypassed.

By way of background, the appellant's name was removed from the subject list on the basis of an unsatisfactory criminal record. The appellant appealed the matter of the removal of his name to the Division of Classification and Personnel Management¹ (CPM), which referred the matter to the Civil Service Commission (Commission) for direct review. In the prior decision, the Commission found that removal of the appellant's name was not warranted since he was 16 years old at the time of the incident and provided evidence of rehabilitation, restored his name to the subject list, but ordered that the appellant's name be recorded as bypassed.

On reconsideration, Mr. Greenwald reiterates that the sole basis for the appointing authority's request to remove him from the subject eligible list was a single 4th degree disorderly persons offense for Hindering Apprehension allegedly committed on October 29, 2004 when he was a juvenile at 16 years of age. The appellant provides that he was never convicted of this charge, has no other criminal charges against him, and that the charge was deferred and then dismissed after he satisfactorily completed community service. Although he maintains that it was proper to restore his name to the list, Mr. Greenwald argues that the Commission

¹ Now known as the Division of Agency Services.

made an error when it ordered that his name be recorded as bypassed. The appellant asserts that the Commission's ruling sets a dangerous precedent by stating that the appointing authority could have bypassed him and maintains that most jurisdictions appoint in rank order and do not use the Rule of Three. Further, the appellant questions why he should bear the cost of appealing a list removal if he can still be bypassed. Mr. Greenwald also argues that it is improper for an appointing authority to remove an eligible from the list on different grounds after losing an appeal. Thus, since the appointing authority never requested his name be bypassed, Mr. Greenwald maintains that he should be appointed to the subject title with retroactive seniority for promotional and salary step-grade purposes.

In response, the appointing authority states that the appellant's criminal record directly relates to the position sought. Specifically, Mr. Greenwald violated the conditions of his Graduate Driver's License by failing to be supervised by an adult driver who was 21 years of age, driving after 11:01 P.M. and before 5 A.M., and driving with more than one additional passenger. Further, when stopped by the police, the appellant provided false statements when he said that he did not have his license on him, when, in fact, he only had a learner's permit and not a license at all, and by providing a fictitious name. As such, the appointing authority asserts that it used its discretion and properly requested to remove his name from the eligible list for an unsatisfactory criminal background.

In reply, Mr. Greenwald states the Commission correctly determined based on his age of 16 years, the absence of other charges, and the substantial evidence of rehabilitation over the past 10 years, that his arrest was an isolated incident and restored his name to the list. Therefore, the appellant asserts that the issue is that despite winning his appeal, unnamed lower-ranked eligibles were appointed in his place. Mr. Greenwald argues that if there are no consequences for losing an appeal such as this, there will be no incentive for appointing authorities to abide by the law.

In further response, the appointing authority states that Mr. Greenwald was not honest during the 2004 traffic stop and that Correction Officers hold highly visible positions in the community and the standard for applicants includes good moral character and an image of utmost confidence and trust. As such, the appellant does not present a personal background that exhibits respect for the law or rules and his arrest adversely relates to the position sought.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented

at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the appellant has not met the standard for reconsideration. Essentially, the appellant maintains that the Commission's decision, where it found the appointing authority did not have sufficient grounds to remove him from the eligible list for an unsatisfactory criminal record, but that his name be recorded as bypassed, is in error. The Commission disagrees. It is clear that the appointing authority, in its discretion under *N.J.A.C. 4A:4-4.8*, can take a candidate's background into account in deciding whether or not to bypass the candidate on an eligible list. See *In the Matter of William Oakley* (MSB, decided June 20, 2007). In the present case, the appellant's record presents a sufficient basis to bypass him on the eligible list. See *N.J.A.C. 4A:4-4.8(a)3*. While the appellant asserts that it was proper to restore his name to the list since the incident occurred when he was a minor, was isolated, and was one from which he has since rehabilitated, it cannot be ignored that he gave false information to a Police Officer that resulted in a deferred disposition after completing 30 hours of community service. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. 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 Correction Officer Recruits to present a personal background that exhibits respect for the law and rules. Moreover, there is no basis on which to retroactively order his appointment since individuals whose names merely appear on a list do not have a vested right to appointment. See *In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).


In response to the appellant's assertions that it has set a dangerous precedent with its decision and that there is no basis for an appellant to appeal a list removal case, the Commission notes that each case is fact specific and under other circumstances, the Commission could have found that the appointing authority did not have a basis to remove the appellant's name from the eligible list nor did the circumstances warrant that the appellant's name be recorded as bypassed. However, in this case, the Commission acted consistent with its many prior determinations where it restored eligibles' names to an expired list and ordered their names be reflected as bypassed on the certification. See *In the Matter of Suzanne Gormeley* (CSC, decided May 7, 2014) and *In the Matter of James Taylor* (CSC, decided February 12, 2014).

ORDER

Therefore, it is ordered that this request for reconsideration 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

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

Attachment

c: David Greenwald
Michael L. Prigoff, Esq.
James Mulholland
Kenneth Connolly



STATE OF NEW JERSEY

In the Matter of David Greenwald,
Correction Officer Recruit (S9987M),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2858

List Removal Appeal

ISSUED: JUL 30 2014

(SLK)

David Greenwald, represented by Michael L. Prigoff, Esq., appeals the removal of his name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections (DOC), on the basis of an unsatisfactory criminal record.

By way of background, the appellant appeared with a rank at 2388 on certification JU11M1 that was issued to the appointing authority on June 10, 2011. The subject eligible list promulgated on June 10, 2011 and expired on June 9, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory criminal record. In support of its request, the appointing authority provided a copy of the appellant's criminal investigation background report which indicated that he was charged with *N.J.S.A. 2C:29-3b, Purposely Hindering Own Prosecution*, in 2004 and received 30 hours of community service in Union County as part of a deferred disposition. The appellant appealed the matter of the removal of his name to the Division of Classification and Personnel Management (CPM), which referred the matter to the Civil Service Commission (Commission) for direct review.

On appeal, the appellant presents that the sole basis for the appointing authority's requested removal was a single 4th degree disorderly persons offense for *Hindering Apprehension* committed in October 2009 when he was a juvenile at age 16. He highlights that he was never convicted of this charge and he has had no other criminal charges. The appellant also explains that the charge was deferred

for six months during which he completed community service and the charge was dismissed. Moreover, he asserts that the charge is unsubstantial and unrelated to the position sought. In this regard, he states that while in high school, he was driving in the evening when there should have been an adult in the car, stopped by the police, and, due to the stress of the situation, when the Police Officer asked him his name, he stated Eric Greenwald instead of David Greenwald. He submits a certification where he acknowledges that it was a "stupid thing to do" and after the Police Officer verified his correct name, he was charged with a violation. Further, the appellant maintains that no crime was committed and, at best, he was charged with a disorderly persons offense. Additionally, he notes that he was 16 years old and in high school at the time of the incident and that the event occurred more than nine years ago. Further, he highlights that this was an isolated event as no other criminal charges have been brought against him either before or since this incident. The appellant cites several examples of rehabilitation including winning numerous wrestling championships in high school, serving as a Cub and Boy Scout, working at a treatment center helping troubled teenagers, working full-time for the past two years as a Sales Consultant for a car dealership, and that he recently got married. Therefore, he maintains that he is completely rehabilitated, that this was an isolated minor offense which took place as a teenager, and that this incident should not be used to prevent him from serving in the subject title.

It is noted that although given the opportunity, the appointing authority did not respond.

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide 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. 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.

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, 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, a law enforcement agency, 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).

Additionally, participation in the PTI 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 PTI 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 PTI program could still be properly considered in removing his or her name from the subject eligible list. 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).

A thorough review of the record indicates that the appellant's removal from the (S9987M) eligible list for Correction Officer Recruit is not warranted. Although the appellant was arrested and charged with Hindering Apprehension, the incident occurred when he was 16 years old almost seven years prior to the list being certified. Moreover, he has completed 30 hours of community service as part of a deferred disposition of the charges and the appellant has had no other convictions or adverse encounters with law enforcement in his record. Further, the appellant has provided evidence of rehabilitation including excelling in high school athletics, serving as a Cub and Boy Scout, working in a treatment center helping troubled teenagers, working full-time as a Sales Consultant, and recently getting married. See *In the Matter of Richard A. Rizzolo*, Docket No. A-0589-03T5 (App. Div. December 8, 2004) (The Appellate Division upheld the restoration of an eligible to a Fire Fighter eligible list, based on significant evidence of rehabilitation since the appellant's arrests in 1989 and 1990. The Appellate Division specifically noted the appellant's successful completion of the Pre-Trial Intervention program after his 1990 arrest, his gainful employment since 1988, his marriage, his involvement in the community and the positive statement of his employer). The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). Taking into

consideration that the appellant's arrest and conviction was an isolated minor incident that occurred in 2004 while a juvenile at age 16, and the totality of the evidence in the record, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record. Nevertheless, the appellant's background does provide a basis for which the appointing authority could bypass his name for appointment.

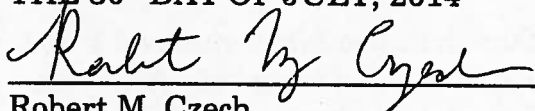
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted, but the appellant's name be recorded as bypassed.

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 30th DAY OF JULY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: David Greenwald
Michael L. Prigoff, Esq.
James Mulholland
Kenneth Connolly



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
DEPARTMENT OF CORRECTIONS
CUSTODY RECRUITMENT UNIT
PO Box 863
TRENTON NJ 08625-0863

GARY M. LANIGAN
Commissioner

February 5, 2013

DAVID M GREENWALD
105 PARKVIEW DR
UNION NJ 07083

RE: NOTIFICATION OF REMOVAL
Symbol: S9987M; Rank: 02388

Dear Candidate:

This is to inform you that your name has being removed from the above referenced open competitive list for Correction Officer Recruit due to:

(X) Security and Background Check: Unsatisfactory Criminal Record-You were charged with and found guilty of 2C:29-3b-Purposely Hindering Own Prosecution in 2004.

NJAC 4A:4-4.7 provides for the removal of a prospective employee for the reason noted. Therefore, your name has been removed from the list.

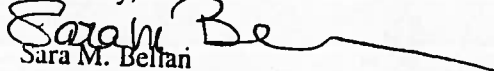
Please be advised that in accordance with NJ Civil Service Commission rules you may appeal this action, in writing, for administrative review within twenty (20) days of receipt of this notice. Your appeal should include any documentation and/or written material which indicates your removal is not warranted.

Your appeal should be sent to:

Assistant Director, Classification and Personnel Management
NJ Civil Service Commission
PO Box 313
Trenton, NJ 08625-0313

PLEASE INCLUDE A COPY OF THIS NOTICE WITH YOUR APPEAL

Sincerely,


Sara M. Bellani

Personnel Assistant/Custody Recruitment Unit

SMB
C: File

