



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Chase Spieker
Correction Officer Recruit (S9988T)
CSC Docket No. 2016-3184

List Removal Appeal

ISSUED: NOV 30 2016 (ABR)

Chase Spieker, represented by Michael L. Testa, Esq., appeals the decision of the appointing authority to remove the appellant's name from the Correction Officer Recruit (S9988T), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T), achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on July 23, 2015 and expires on July 22, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was charged with simple assault in violation of *N.J.S.A. 2C:12-1A* in 2012, which was diverted through a Juvenile Conference Committee, and the charge was dismissed after the conditions were met, including completion of an anger management program.

On appeal to the Civil Service Commission (Commission), the appellant argues that the simple assault charge does not fit the criteria for removal from the eligible list. Specifically, the appellant argues that because the New Jersey Criminal Code classifies simple assault as a disorderly persons offense, rather than a crime, it prevents the appointing authority from striking him from the eligible list on the basis of an unsatisfactory criminal history. The appellant also stresses that the charge cannot be considered part of a criminal history because his status as a

juvenile at the time of the incident precluded him from being charged with a criminal offense.

In response, the appointing authority argues that it appropriately removed the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. In the instant matter, it maintains that the appellant was charged with simple assault in violation of *N.J.S.A. 2C:12-1A(1)* based on an incident that occurred on November 15, 2011, and that the charge was dismissed on May 9, 2012. He applied for the subject examination by the closing date of January 8, 2015.

Citing *N.J.A.C. 4A:4-4.7*, the appointing authority argues that as a recognized law enforcement agency, it is permitted to review and use juvenile records to assess a candidate's suitability for employment. In the appellant's case, the appointing authority contends that his juvenile violation of the law clearly relates to the employment sought and does not demonstrate the integrity and judgment required for the position. It further argues that the application clearly informed candidates of all potential reasons a candidate could be removed from the preemployment process. In support, it submits portions of the appellant's pre-employment application. The appellant, in explaining the 2012 charge, indicated that he "had a fight in school...later went to anger management and the charge got dismissed by the J.C.C. Chairperson" and that "[n]o further action was called for." The appellant also indicated that he graduated from high school in 2014, completed a technical school program in 2014, and was employed full-time from October 2014 to August 2015.

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 eligible 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.

The presentation to an appointing authority of a pardon or expungement prohibits an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. It is noted that the Appellate Division of the Superior

Court remanded the matter of a candidate's removal from a Police Officer eligible 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).

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). *N.J.S.A. 2A:4A-48* provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). 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.

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, an eligible's arrest and entry into a juvenile diversionary program, which is similar to the PTI Program, could still be properly considered in removing the eligible's name from an 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).

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. *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 name from an eligible list was in error.

Additionally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C.* 4A:4-4.7(a)4, the fact that an eligible was involved in such activity may reflect upon the eligible's character and ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here, as the appellant was arrested for a disorderly persons offense, the offense did not rise to the level of a crime. Nevertheless, the appellant's arrest could still be considered in light of the factors noted in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether they adversely related to the employment sought.

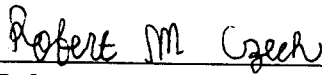
In this matter, a review of the record indicates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list based on a determination of the appellant's overall fitness for the position under *N.J.A.C.* 4A-4-4.7(a)1 in conjunction with *N.J.A.C.* 4A:4-6.1(a)9. While the appellant's employment application indicated some evidence of rehabilitation, namely completion of high school and a technical school program in 2014 and subsequent full-time employment from October 2014 to August 2015, the nature of the incident and its relatively recent timing show that the appointing authority was justified in its request for removal. The November 2011 incident can be considered serious, given that it resulted in an assault-related charge. The appellant had to undergo anger management as a condition for dismissal of that charge. Moreover, although the appellant was only 16 years old at the time of the incident, the dismissal of the charge occurred in May 2012, less than three years before the closing date for the subject examination. The Commission notes that a Correction Officer Recruit is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community, and the standard for an applicant includes good character and the 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). The public expects prison guards to demonstrate a personal background that exhibits respect for the law and rules, as well as an even temperament, given their responsibilities for maintaining in State prisons. the Department of Corrections. Accordingly, the appellant's criminal record, as a factor relevant to a determination of the appellant's fitness, provides a sufficient basis to remove his name from the eligible 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 23RD DAY OF NOVEMBER, 2016**



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Chase Spieker
Michael L. Testa, Esq.
Lisa Gaffney
Jennifer Rodriguez
Kelly Glenn

