

B-12



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Geovany Ayala,
County Correction Officer (S9999R),
Essex County

List Removal Appeal

CSC Docket No. 2016-3930

ISSUED: DEC 12 2016

(ABR)

Geovany Ayala, represented by Randy T. Pearce, Esq., appeals the decision of the appointing authority to remove his name from the County Correction Officer (S9999R), Essex County eligible list on the basis that he falsified his application.

The appellant took the open competitive examination for County Correction Officer (S9999R), which had a closing date of September 4, 2013, achieved a passing score, and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 2, 2014, and expires on May 1, 2017. The appellant's name was certified to the appointing authority on December 1, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to his falsification of his Preliminary Background Questionnaire. In this regard, the appointing authority noted that the appellant answered "no" to the question which asked if he had ever been "convicted of a crime or disorderly persons offense." The appellant did answer "yes" to the question about whether he had ever been arrested and indicated that he was arrested in July 2005 in Belleville for possession of paraphernalia, was found guilty and placed on probation, and was also arrested in Seaside Heights for "Beer on Beach" which resulted in a fine. The appellant did not specify when the Seaside Heights arrest occurred. A criminal background investigation revealed that the appellant was charged with prohibited noise in violation of Belleville Township Ordinance 3-5.3 and possession of drug paraphernalia in violation of *N.J.S.A. 2C:36-2* in September 2004. The background investigation indicated that the appellant pled guilty to the noise ordinance violation and paid a fine in October 2004. It also showed that he fulfilled the terms of a conditional discharge for the drug paraphernalia possession charge in August

2006. The criminal background investigation also revealed that, following an August 2012 incident in Seaside Heights, the appellant was charged with resisting arrest in violation of *N.J.S.A. 2C:33-2A*, disorderly conduct in violation of *N.J.S.A. 2C:29-2A*, and failure to pay beach fee in violation of Code of the Borough of Seaside Heights (Seaside Heights Code) § 33-7. The background investigation revealed that the disorderly conduct charge was subsequently amended to a charge for public nuisance in violation of Seaside Heights Code § 154-11 in October 2012, while the resisting arrest and disorderly conduct charges were dismissed. The appellant pled guilty to the public nuisance and failure to pay beach fee charges in October 2012 and was fined for each violation.¹ Finally, the appointing authority maintains that based on the appellant's "recent arrest" and the falsification of his application, his removal was appropriate.

On appeal to the Civil Service Commission (Commission), the appellant argues that there was no basis to remove him from the subject eligible list because his answers to the conviction history questions in his Preliminary Background Questionnaire were accurate. The appellant explains that the charges at issue resulted from incidents that occurred in September 2004 and August 2012 and notes that his only convictions were for municipal ordinance violations which do not constitute crimes or disorderly persons offenses. He stresses that the municipal noise violation was the only conviction that resulted from the September 2004 incident, as the drug paraphernalia possession charge was conditionally dismissed. Similarly, the appellant notes that the fines for violating municipal ordinances regarding nuisance and failure to pay a beach fee were the only convictions that resulted from the August 2012 incident. Finally, the appellant claims that he provided information about all of the arrests and charges on his application.

Despite an opportunity to do so, no response was submitted by the appointing authority.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the Commission to remove an eligible's name from an employment list when he has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *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:

¹ The background investigator's report states that the appellant was fined after being found guilty of disorderly conduct and failure to pay beach fee following the 2012 incident. However, the Automated Complaint System records included with the report indicate that the appellant instead pled guilty to the amended charge for public nuisance and failure to pay beach fee.

- 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).

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 be properly considered in removing his name from the subject eligible list.

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 or her name from an eligible list was in error.

At the outset, it is noted that the appellant's answer of "no" in response to the question of whether he had ever been "convicted of a crime or disorderly persons offense" does not constitute falsification. With respect to the 2004 incident, neither

the appellant's conviction for violating a Belleville noise ordinance, nor the conditional discharge of the drug paraphernalia charge, constitutes a criminal or disorderly offense conviction. Similarly, the appellant's 2012 convictions for public nuisance and failure to pay beach fee were convictions for municipal ordinance violations, rather than for crimes or disorderly persons offenses. Accordingly, the appellant's response to the foregoing question was not a falsification and thus does not support his removal from the eligible list on that basis.

Nevertheless, a review of the record in this matter indicates that the appellant's unsatisfactory criminal history, namely his 2004 and 2012 arrests, supports his removal from the subject eligible list. In this regard, it is recognized that a County Correction Officer is a law enforcement employee who must help keep order in the 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 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); *In re Phillips*, 117 N.J. 567 (1990). The public expects County Correction Officers to present a personal background that exhibits respect for the law and rules. Clearly, a criminal history that includes arrests for possession of drug paraphernalia, disorderly conduct, and resisting arrest reflects poorly upon the appellant's ability to meet the high standards of conduct expected of a County Correction Officer. Moreover, the instant matter does not involve an isolated incident which led to an arrest. Furthermore, at the time of his 2012 arrest, the appellant was 27 years old, and he was 19 years old at the time of his 2004 arrest. Moreover, the 2012 incident was relatively recent, having occurred approximately one year before the closing date of the subject examination. Accordingly, the appellant's criminal history 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 7TH DAY OF DECEMBER, 2016

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