

B-11



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Brittney Hill,  
Correction Officer Recruit (S9988T),  
Department of Corrections

List Removal Appeal

CSC Docket No. 2016-3971

ISSUED: **DEC 12 2016** (ABR)

Brittney Hill appeals the decision of the appointing authority to remove her name from the Correction Officer Recruit (S9988T), Department of Corrections eligible list on the basis of an unsatisfactory criminal record, an unsatisfactory background report and falsification of her pre-employment questionnaire.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T), which had a closing date of January 8, 2015, 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, an unsatisfactory background report, and falsification of her pre-employment questionnaire. In this regard, the appointing authority asserted that the appellant failed to disclose being charged with criminal mischief in violation of *N.J.S.A. 2C:17-3A* in January 2012; defiant trespass in violation of *N.J.S.A. 2C:18-3B* in January 2012; and harassment in violation of *N.J.S.A. 2C:33-4A* in January 2007, which was diverted through a juvenile diversion program, and the charge was ultimately dismissed in March 2007. The harassment charge was also cited as a basis for removal due to an unsatisfactory criminal record. The appointing authority further claimed that the appellant's conviction for a July 2014 violation of a municipal ordinance prohibiting loud noise supported removal on the basis of an unsatisfactory background report.

On appeal to the Civil Service Commission (Commission), the appellant argues that her removal from the subject eligible list is not warranted because

many of the incidents occurred when she was a minor and several charges resulted from false accusations that were leveled against her. The appellant admits to the 2014 loud noise conviction, but contends that she was not "physically arrested" for the underlying incident and that it was "forgotten about." The appellant states that the other charges cited by the appointing authority were dismissed because she was falsely accused of wrongful conduct by her father's ex-girlfriend, who "was angry...and thr[ew] his children in it." The appellant claims that, as a result of the charges being dismissed, she is unable to obtain any proof from her local police department that she had been falsely accused of the alleged conduct. She contends that it would be unfair to remove her from the eligible list because she cannot secure proof that she was, in fact, falsely accused of criminal conduct. The appellant also stresses that she has been successfully employed as a security guard and has maintained a Security Officer Registration Act license for approximately four years without incident. Although not raised by the appointing authority, the appellant admits that she was charged with simple assault in violation of *N.J.S.A. 2C:12-1A(1)* in July 2011 and that the charge was dismissed for lack of prosecution. The appellant explains that she was charged after an incident where she sprayed her intoxicated father with pepper spray in order to prevent him from harming her mother. The appellant also admits that she pled guilty to careless driving in 2012 and failing to maintain vehicle lamps in 2013. The appellant explains that she was charged with careless driving after remaining at a stop sign for too long while searching for her debit card.

In response, the appointing authority reiterates that it appropriately removed the appellant's name from the subject eligible list due to her failure to disclose that she was charged with harassment in 2007, criminal mischief in January 2012 and defiant trespass in January 2012. It also argues that the disposition of the charges has no bearing on the requirement that she disclose the charges on her application. The appointing authority submits documentation from the New Jersey Automated Complaint System which indicates that the 2012 charges resulted from an incident where the appellant was accused of following her father and an acquaintance to a location and blocking their driving path, at which point she proceeded to throw knives, rocks and a car jack at the acquaintance's car, causing approximately \$1,700 in damages to the vehicle. The appellant was also accused of breaking two front windows and a storm window at the acquaintance's house. The appointing authority also submits its Criteria for Removal from the Eligible List, along with page 18 of the appellant's pre-employment questionnaire, where the appellant answered "N/A" in response to the questions about her arrest history. The appointing authority notes that the relevant section defines the word "charge" to include any "indictment, complaint, *summons*, and information..." It also submits page 26 of the pre-employment questionnaire, where the appellant signed an Affidavit and Certification of Applicant, acknowledging that any intentional misrepresentation or omission of information supplied by her could result in her disqualification from the selection process and her removal from the

eligible list. Citing the Merit Systems Board's<sup>1</sup> decision in *In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991), the appointing authority argues that an honest mistake is not a permissible excuse for an omission of material information from an application. The appointing authority emphasizes that an eligible may be denied appointment for sufficient reasons pursuant to Title 4A of the New Jersey Administrative Code. The appointing authority stresses that, for effective daily management of prison system operations, it is imperative that a prospective Correction Officer Recruit demonstrate respect for the law and that the appellant's failure to disclose her charges, as instructed, indicates that she would not be suited for the position of Correction Officer Recruit.

### 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 she 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:

- 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).

Furthermore, 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.*

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<sup>1</sup> The Merit System Board was the name of the predecessor of the current Commission.

*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).

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 or her name from an eligible list was in error.

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 the falsification of her pre-employment application. The appellant's failure to disclose in her pre-employment questionnaire that she was charged with harassment in 2007, along with criminal mischief and defiant trespass in 2012 supports her removal from the eligible list on the basis of a falsified application. The ultimate disposition of the appellant's harassment, criminal mischief, and defiant trespass charges has no bearing on her disclosure obligations. It is noted

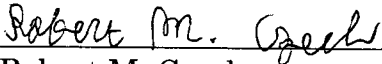
that the appointing authority's pre-employment questionnaire provides clear instructions to that effect. The information that the appellant withheld is considered material and should have been accurately indicated on the questionnaire. Her failure to disclose the aforementioned information is indicative of the appellant's lack of integrity and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correction Officer Recruit. In this regard, it is recognized that a Correction Officer Recruit 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 Correction Officers to present a personal background that exhibits respect for the law and rules. Clearly, a criminal history that includes arrests for criminal mischief, defiant trespass, and harassment reflects poorly upon the appellant's ability to meet the high standards of conduct expected of a Correction Officer Recruit. Accordingly, the appellant's falsification of her application provides a sufficient basis to remove her 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 7<sup>TH</sup> DAY OF DECEMBER, 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: **Brittney Hill**  
**Lisa Gaffney**  
**Jennifer Rodriguez**  
**Kelly Glenn**