

B-15



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Jency Reynosa,  
Police Officer (S9999R), Pleasantville

List Removal Appeal

CSC Docket No. 2016-2507

ISSUED: **DEC 09 2016** (HS)

Jency Reynosa appeals the removal of his name from the eligible list for Police Officer (S9999R), Pleasantville on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open competitive examination for Police Officer (S9999R), which had a closing date of September 4, 2013. The resulting eligible list promulgated on May 2, 2014 and expires on May 1, 2017.<sup>1</sup> The appellant's name was certified to the appointing authority on June 12, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was charged with theft by unlawful taking or disposition in violation of *N.J.S.A. 2C:20-3A* in 2012. According to the police record, the manager of the appellant's employer, a restaurant, reported that the appellant had used a supervisor's computer access to manipulate customer checks by voiding cash checks and menu items and replacing them with a gratuity. The police record further indicated that the thefts were reported to have occurred between April 1, 2012 and August 9, 2012.<sup>2</sup> The charge was ultimately dismissed for lack of prosecution.

On appeal to the Civil Service Commission (Commission), the appellant argues that the matter for which his name was removed from the eligible list was

<sup>1</sup> The expiration date of the subject eligible list was extended one year, to May 1, 2017.

<sup>2</sup> As of this timeframe, the appellant was an adult.

disposed of because he was accused of theft and was "proven innocent." He also notes that he was not arrested.

In response, the appointing authority reiterates that the appellant's background was unsatisfactory, in relevant part, due to being charged with theft. The investigation revealed that the appellant admitted to the restaurant manager that he had used a supervisor's code to void items "once or twice" and had repaid the monetary value of those items. The investigation also revealed that the appellant had never been arrested. In support, the appointing authority submits a copy of the background investigation report, among other documents.

It is noted that the appellant did not reply to the appointing authority's response.

### 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 shall prohibit 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).

*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.

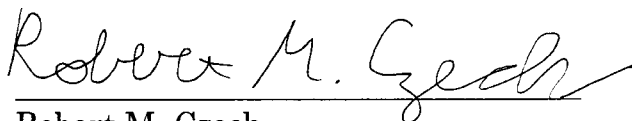
In this matter, a review of the record indicates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list based on the 2012 theft charge. While it is acknowledged that the appellant was not arrested, he was charged with theft in 2012. The investigation revealed that the appellant admitted to using a supervisor's code to void items and change the amount to a gratuity. Based on the April 1, 2012 to August 9, 2012 timeframe indicated in the police record, the act or acts were not so remote in time from the September 2013 closing date for the subject examination as to render the appointing authority's request unjustified. Moreover, the appellant was an adult as of the timeframe for the act or acts, and although the appellant indicated he repaid the amount at issue, he has not presented any evidence of rehabilitation. Furthermore, although the appellant claims he was found "innocent," the record reveals instead that the charge was dismissed due to a lack of prosecution. The Commission further notes that a Police Officer is a law enforcement employee who must enforce and promote adherence to the law. 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 Police Officers to present a personal background that exhibits respect for the law and rules. Therefore, there is a sufficient basis to remove the appellant's 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



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