

*In the Matter of Ronald Riggins, Correction Officer Recruit (S9999H),
Department of Corrections
CSC Docket No. 2008-4532
(Civil Service Commission, decided May 13, 2009)*

The Department of Corrections (DOC) appeals the attached decision of the Division of State Human Resource Management (SHRM) which reinstated Ronald Riggins' name to the eligible list for Correction Officer Recruit (S9999H).

The open-competitive examination for Correction Officer Recruit (S9999H) was announced with a closing date of March 31, 2006. The resultant eligible list promulgated on December 24, 2006 and expired on December 23, 2008. In disposing of the March 19, 2007 certification, the appointing authority requested the removal of Riggins' name on the basis of an unsatisfactory criminal record. Specifically, the DOC asserted that Riggins had been arrested on February 13, 2004 for possession of marijuana and entered into a diversionary program for six months and fined \$675. Upon completion of the diversionary program, Riggins received a conditional discharge and the charge was dismissed.

Subsequently, Riggins, represented by Edward Duffy, Esq., appealed the removal of his name to SHRM and argued that at the time of his arrest, he was 19 years old and immature. However, it was an isolated event and he had not been arrested prior to that event or subsequently nor had he received any motor vehicle violations. Moreover, he maintained that he graduated from high school in 2002, and from 2002 to January 2007, he had been employed at a pizzeria. On January 20, 2007, the DOC hired him as a Communications Operator Trainee and he had successfully completed his working test period. Riggins also asserted that he has matured significantly since his one and only arrest and had married and is a father of two. Based on the foregoing, in a February 26, 2008 decision, SHRM restored Riggins' name to the subject eligible list for future vacancies.

On May 19, 2008, the DOC appealed the restoration of Riggins' name to the subject eligible list. Specifically, it asserts that it had "recently come to [its] attention" that there were "disturbing circumstances" surrounding Riggins' arrest, namely, that he had purchased marijuana on a daily basis prior to his arrest. The DOC maintains that the duties of a Correction Officer require strict adherence to the law to ensure the safety and security of staff, inmates and the public and therefore, its goal is to select candidates who exhibit respect for the law. Moreover, it argues that it has become increasingly difficult to stop illegal drugs from making their way into the

prison system. Consequently, it asserts that Riggins is not a suitable candidate and his name should be removed from the subject eligible list.

Riggins initially asserts that the DOC's appeal is untimely and should be dismissed since the decision of SHRM was dated February 26, 2008. However, the DOC did not appeal until May 19, 2008, two months after the 20-day time limit expressed in *N.J.A.C. 4A:2-1.1* had expired. Regardless, Riggins argues that the DOC's basis for appeal, concerning the circumstances of his arrest, should also be dismissed since the Investigation Report had been in the DOC's possession at the time of its initial request for removal, yet it failed to raise its additional concerns about his arrest. Moreover, Riggins maintains that the DOC attempts to rely on a single uncorroborated statement from an individual who was arrested for supplying Riggins with the marijuana, and who had an extensive arrest record for drugs. Consequently, Riggins argues that the statement in the Investigative Report should not be relied on since an individual cannot be removed on mere insinuations or rumor. *See In the Matter of Richard Orne, Jr.*, (Merit System Board¹, decided February 29, 2007).

Additionally, Riggins reiterates his previous argument that his arrest was an isolated incident and that since his arrest, he completed the diversionary program and was granted a Conditional Discharge. Further, he maintains that he was employed with the same employer from his high school graduation until the DOC appointed him as a Communications Operator Trainee in January 2007. In support, he submits a letter of recommendation from George Stergon who indicated that Riggins was employed at his pizzeria from May 2001 until January 2007 and worked at least 40 hours a week and when necessary, would work up to 70 hours a week. Stergon maintained that Riggins was a consistent and reliable employee who could be "counted on" to come in and work when other employees called out sick and eventually Riggins was left to supervise the store when Stergon needed to leave the premises. He also submits a letter of recommendation from Correction Captain J.R. Atkinson, who had interviewed Riggins for employment with the DOC. Atkinson asserted that Riggins excelled in all aspects of his training for the position of Communications Officer and has since become the Operations Unit Relief Operator who is responsible for scheduling and staffing the second and third shift, involving 300 staff members. Atkinson asserted that Riggins performed his duties with minimal supervision and has proven to be an asset

¹ On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Civil Service Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Civil Service Commission. In this decision, the former names will be used to refer to actions which took place prior to June 30, 2008.

and dependable. Atkinson noted that although he did not know Riggins at the time of his arrest, he believed that since his employment with the DOC, Riggins has presented himself well and has grown and matured in a positive way and that although he would “hate to lose him as an operator,” Atkinson believes that Riggins would be an asset to the DOC as a Correction Officer. Moreover, the Riggins submits a satisfactory Performance Evaluation System (PES) report for the period of June 15, 2006 to June 14, 2007.

Further, Riggins argues that “estoppel is applicable herein” since as a result of his successful appeal to SHRM, the DOC had notified him that it was processing him for employment and he completed Phase I and Phase II processing. Thereafter, he completed and passed the medical and psychological testing and was ordered to report for training on May 27, 2008 at the Sea Girt Training Academy (Academy). However, on May 22, 2008, he was told not to report to the Academy as previously scheduled for training. Riggins argues that as a result, he failed to file for the next Law Enforcement Examination and therefore, he is unable to apply for future consideration until after the expiration of that eligible list.

Despite an opportunity to do so, the DOC failed to submit any further arguments.

Personnel records reveal that Riggins continues to serve with the DOC as a Communications Operator, Secured Facilities.

CONCLUSION

N.J.A.C. 4A:4-6.6(a)1 provides that an appeal must be filed within 20 days of notice of the action, decision or situation being appealed. Although the DOC presents a substantive challenge to the reinstatement of Riggins’ name to the eligible list for Correction Officer Recruit (S9999H), the controlling issue in this matter is whether the DOC’s appeal of Riggins’ reinstatement was timely filed. As an initial matter, the appellant’s name was restored to the eligible list for Correction Officer Recruit (S9999H) on February 26, 2008. However, it was not until May 19, 2008, nearly three months later, that the DOC submitted its appeal of the reinstatement of Riggins’ name to the subject eligible list. Additionally, the DOC failed to address the timeliness of its appeal or provide any explanation for its delay. Moreover, the DOC was well aware of, or should have been aware of, the information it now relies on since it was contained in the Investigation Report of Riggins’ arrest. The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the appeal unreasonably exceeds that threshold of finality. Thus, it is clear that the DOC’s appeal of Riggins’

reinstatement to the Correction Officer Recruit (S9999H) eligible list is untimely.

Nor is there any basis in this particular case to extend or to relax the time for appeal. See *N.J.A.C. 4A:1-1.2(c)* (the Civil Service Commission (Commission) has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting the right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing “good cause” in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com’n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). See e.g., *Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of the Board’s appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). In this case, the DOC has not presented any reason that would excuse the delay in filing its appeal. In fact, the DOC failed to address the issue of the untimeliness of its appeal. The record reveals that upon receipt of the February 26, 2008 decision from SHRM, the DOC processed Riggins for employment, which included medical and psychological examinations, which he passed and ordered Riggins to appear for training at the Academy on May 27, 2008. Therefore, it is clear that the DOC had notice that Riggins’ name had been restored to the eligible list. However, it did not appeal that decision until after it had already processed him for employment. Regardless, the Commission notes that the failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission’s rules. See *Savage v. Old Bridge-Sayreville Med. Group*, 134 *N.J.* 241, 248 (1993) (ignorance of the specific basis for legal liability does not operate to extend time to initiate legal action). Accordingly, the DOC’s appeal of the reinstatement of Riggins’ name to the Correction Officer Recruit (S9999H) eligible list is untimely, and it has failed to show good cause to justify relaxing the requirements of *N.J.A.C. 4A:4-6.6(a)1*.

Even if the DOC’s appeal had been timely filed, it has failed to provide a sufficient basis to uphold the removal of Riggins’ name on the basis of his criminal record. In this regard, *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, firefighter or correction officer and other titles as determined by the Commission. 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) (Court stated that a drug offense which 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. However on appeal to SHRM, Riggins presented sufficient evidence of rehabilitation, namely, that his arrest was a one time event and that he was employed by the same employer from May 2001 until his appointment by the DOC as a Communications Officer Trainee on January 20, 2007. Personnel records also reveal that Riggins continues to serve with the DOC as a Communications Operator, Secured Facilities. Moreover, Riggins submits letters of recommendations from his former employer at a pizzeria and Atkinson, a Correction Captain with the DOC, both of whom indicated that Riggins was a reliable and responsible employee. Atkinson asserted that Riggins performed important duties, *i.e.*, scheduling over 300 employees for two shifts, with minimal supervision, and that he was an asset to the DOC.

Additionally, the Commission does not agree with the DOC's assertion that Riggins' name should be removed from the subject eligible list due to "disturbing circumstances" surrounding his arrest, namely, that he had

“purchased” marijuana on a daily basis prior to his arrest. It is noted that Riggins was never charged for that conduct. Moreover, Riggins notes that the statement was made by the individual who was also arrested and who had a lengthy criminal record. In *In the Matter of Richard Orne, Jr.* (MSB, decided February 28, 2007), the Board restored the name of an eligible to a Police Officer list, finding that his association with individuals under surveillance by law enforcement authorities, the appointing authority’s concerns with incidents that indicated “physical aggressiveness,” and the appellant’s admissions that he participated in minor illegal activities for which he was not charged, did not provide a sufficient basis to remove his name from the list. Accordingly, since Riggins was never charged for the alleged conduct, it does not provide a sufficient basis to remove his name from the subject eligible list.

Finally, the DOC, in its discretion could have bypassed Riggins’ name on the subject eligible list pursuant to the “Rule of Three,” *N.J.A.C.* 4A:4-4.8(a)3. However, the record reveals that Riggins took and passed both the medical and psychological examinations. In subjecting Riggins to the medical and psychological examinations, and absent disqualification issues as indicated above, his appointment is mandated. In this regard, pursuant to the Americans with Disabilities Act (ADA), 42 *U.S.C.A.* sec. 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. *See also*, the Equal Employment Opportunity Commission’s *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be “real,” the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate’s possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information. In this case, an evaluation of Riggins’ background does not indicate any disqualification issues. *Compare, In the Matter of Curtis L. Dorch* (MSB, decided September 25, 2002) and *In the Matter of Scott Gordon* (MSB, decided December 18, 2002) (Despite technical violations of the ADA, the Board found that the appellants in each case had both an adverse driving record and adverse employment history which warranted the removal of their names from Police Officer eligible lists).

ORDER

Therefore, it is ordered that the Department of Corrections’ appeal be denied. It is further ordered that the Department of Corrections appoint Ronald Riggins. Upon successful completion of his working test period,

Riggins' record should reflect a retroactive appointment date of May 27, 2008 for salary step placement and seniority-based purposes only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.