

B-4



STATE OF NEW JERSEY

In the Matter of Robert Hughey,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2881

List Removal Appeal

ISSUED: **AUG 21 2015** (SLK)

Robert Hughey appeals the attached determination of the Division of Classification and Personnel Management¹ (CPM) upholding the removal of his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R),² achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 23, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record and unsatisfactory employment record. Specifically, the appellant was charged with 3rd degree 2C:39-4D-Weapon Possession Unlawful Purpose-Other; 4th degree 2C:39-5D-Unlawful Possession Weapon-Other; 3rd degree 2C:12-1B(2)-Aggravated Assault with Deadly Weapon; and 2nd degree 2C:24-4A-Endanger Welfare of a Child Duty. Through a plea bargain, the charge of Endanger Welfare of a Child Duty was downgraded to Abuse of Child-Cruelty-Neglect, a 4th degree offense and the other charges were dismissed. Additionally, the appellant was suspended by his current employer, Federal Express, in February 2014. The appellant appealed to CPM which found that the appointing authority had sufficiently supported its request to remove his name from the list.

¹ Now known as the Division of Agency Services.

² It is noted that the Correction Officer Recruit (S9988R) eligible list expired on July 3, 2015.

On appeal, the appellant presents that in 1997 he pleaded guilty to an Abuse of Child-Cruelty-Neglect 4th degree offense which involved him disciplining his child with a belt. The appellant maintains that family members escalated this event because they did not want him to gain custody of his daughter. The appellant states that his parent used a belt to discipline him which helped him become respectful, honest, and obedient. The appellant provides he was raising his daughter in the same way that he was raised so that he could impart his values on her. The appellant claims that when he pleaded guilty he was following the public defender's advice and did not imagine that this offense could be held against him for the duration of his life. The appellant emphasizes that this offense happened over 17 years ago and that he did not know that using a belt to discipline a child was a crime. The appellant presents that he has been working for Federal Express since 1993 and has never been written up for unsatisfactory performance. The appellant claims that there was an incident where Federal Express had to conduct an investigation as part of its standard procedure and that he was suspended for two days with pay until the investigation was completed. The appellant indicates that after the investigation, he was brought back to work full-time without any loss of seniority. The appellant also submits a Final Order of Expungement and a letter from the State Bureau of Identification that indicates that his files have been corrected to comply with the Order of Expungement and that it has initiated action to remove the information from the files of the Identification Division, Federal Bureau of Investigation.

In response, the appointing authority presents that its employment application indicates that a conviction of a crime of the 4th degree or higher is grounds for removal from the eligible list and that the appellant pleaded guilty in 1997 to a 4th degree offense, Abuse of Child-Cruelty-Neglect. It asserts that this 4th degree offense was not an isolated incident as the appellant admits in his employment application that he has been charged with numerous offenses, all of which he received as an adult at age 30 or older. Therefore, while all of these other charges have been dismissed, the appointing authority argues that at the very least the appellant has demonstrated behavior that is inconsistent with the standards expected of a law enforcement officer. Further, it highlights that the appellant's most recent offense took place after the January 14, 2013 closing date for the subject examination. Consequently, the appointing authority maintains that the appellant is not a suitable candidate.

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 Civil Service 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).

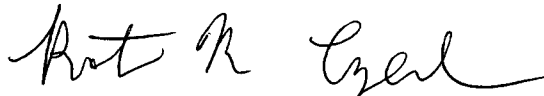
In the instant matter, the appointing authority has presented a valid basis to remove the appellant's name from the subject list. The appellant, at age 30, pleaded guilty in 1997 to a 4th degree offense, Abuse of Child-Cruelty-Neglect. Thereafter, as indicated on page 18 of the appellant's employment application, the appellant was charged between 1999 and 2013 with numerous offenses, after age 30, including his latest charge which took place after the subject examination closing date. While all of these charges have been dismissed, despite being given the opportunity, the appellant did not provide any response or explain why he is regularly being charged with criminal or other offenses throughout his adult life. Therefore, his multiple negative encounters with law enforcement adversely relate to the position of Correction Officer Recruit. Additionally, the appellant has failed to provide evidence of rehabilitation. Consequently, the totality of the appellant's background, which includes multiple adverse interactions with law enforcement, demonstrates that at minimum he lacks the judgment necessary for a law enforcement position. 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). See also *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. Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Correction Officer Recruit (S9988R) 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 19th DAY OF AUGUST, 2015**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

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

Attachments

**c: Robert Hughey
James Mulholland
Kenneth Connolly**



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
Division of Classification & Personnel Management
P. O. Box 313
Trenton, New Jersey 08625-0313

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

April 20, 2015

Robert L. Hughey Sr.	Title: Correction Officer Recruit Symbol: S9988R Jurisdiction: Department of Corrections Certification Number: JU13D01 Certification Date: 05/23/2013
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Initial Determination: Removal – Unsatisfactory Criminal Record

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C.4A:4-4.7(a) 4 which permits the removal of an eligible candidate's name from the eligible list for unsatisfactory criminal history.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Robert L. Hughey Sr.

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Henry Maurer, Director
Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Assistant Director, Joe Hill Jr.

A handwritten signature in cursive script that reads "Mignon K. Wilson". The signature is written in dark ink and is positioned above the printed name and title.

Mignon K. Wilson
Human Resource Consultant



State of New Jersey
DEPARTMENT OF CORRECTIONS
CUSTODY RECRUITMENT UNIT
PO Box 863
TRENTON NJ 08625-0863

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

GARY M. LANIGAN
Commissioner

July 2, 2014

ROBERT HUGHEY
[REDACTED]

RE: NOTIFICATION OF REMOVAL
Symbol: S9988R; Rank: 8942

Dear Candidate:

This is to inform you that your name has been removed from the above referenced open competitive list for Correction Officer Recruit due to:

- (X) Security and Background Check: Unsatisfactory Criminal Record-You were charged with the following: 3rd degree 2C:39-4D-Weapon Possession Unlawful Purpose-Other; 4th degree 2C:39-5D-Unlawful Possession Weapon-Other; 3rd degree 2C:12-1B(2)-Aggravated Assault with Deadly Weapon; 2nd degree 2C:24-4A-Endanger Welfare of a Child-Duty. Through a plea bargain the charge of Endanger Welfare of a Child-Duty was downgraded to Abuse of Child-Cruelty-Neglect, a 4th degree offense, to which you plead guilty and were sentenced to one year probation and fined on 11/14/97. The remaining charges were dismissed per the plea bargain. Unsatisfactory Employment Record-You were suspended by your current employer, Fed Ex, in February of 2014.

NJAC 4A:4-4.7 provides for the removal of a prospective employee for the reason noted. Therefore, your name has been removed from the list.

Please be advised that in accordance with NJ Civil Service Commission rules you may appeal this action, in writing, for administrative review within twenty (20) days of receipt of this notice. Your appeal should include any documentation and/or written material which indicates your removal is not warranted. You must send a copy of your appeal to the undersigned.

Your appeal must be filed with:

Assistant Director, Classification and Personnel Management
NJ Civil Service Commission
PO Box 313
Trenton, NJ 08625-0313

YOU MUST INCLUDE A COPY OF THIS NOTICE WITH YOUR APPEAL and forward a copy of your appeal documents to the Department of Corrections for our records.

Sincerely,

Custody Recruitment Unit
New Jersey Department of Corrections

