

B-6



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of B.G., County
Correction Officer (C9979M), Essex
County

CSC Docket No. 2016-2513

List Removal Appeal

ISSUED: MAR 17 2017 (CSM)

B.G.,¹ appeals the determination of the Division of Agency Services (Agency Services) which upheld the removal of her name from the eligible list for County Correction Officer (C9979M), Essex County, on the basis of an unsatisfactory background report.

By way of background, the appellant's name appeared on the subject list which expired on May 1, 2014. On October 24, 2012, the appellant's name was certified (OL121415) in the 7th position. In disposing of the certification on June 6, 2013, the appointing authority requested the removal of the appellant's name on the basis of psychological unfitness to perform effectively the duties of the position. The appellant appealed that matter to the Civil Service Commission (Commission) and it was brought before the Medical Review Panel on September 23, 2014, which recommended that she be restored to the eligible list. The Commission restored the appellant's name to the subject list and indicated that absent any disqualification issue ascertained through an updated background check, since she was subjected to a psychological examination by the appointing authority, she was entitled to a retroactive permanent appointment for salary step and seniority-based purposes only, effective the date she would have been appointed if her name had not been removed from the list. See *In the Matter of B.G.* (CSC, decided December 17, 2014).

Subsequently, the appointing authority conducted the updated background check and requested that the appellant's name be removed from the list based on an

¹ As this matter stems from a prior decision where initials were used to identify the appellant, they will be used in this matter.

unsatisfactory background report. Specifically, it indicated that the appellant was charged on June 19, 2013 with simple assault, but it was dismissed at the prosecutor's discretion as the alleged victim was a no-show. It also noted that the appellant was charged on August 3, 2011 with resisting arrest and improper behavior and was found guilty of local ordinance violations and paid a fine of \$880. It also indicated that she was arrested on a warrant for harassment on June 5, 2011, found guilty of being a public nuisance, and paid a fine of \$883 and received summonses for improper behavior/disorderly conduct and possession, consumption of alcohol under the legal age on February 19, 2006, found guilty and paid a fine of \$416. The appellant was also charged with improper behavior/disorderly conduct and resisting arrest on June 5, 2011 and for improper behavior/disorderly conduct on March 9, 2012, but these matters were dismissed. The appellant appealed the matter of the removal of her name from the list to Agency Services, which found that the appointing authority sustained its request to remove her name from the list.

On appeal to the Commission, the appellant explains the situations surrounding her various arrests and summonses. Additionally, the appellant provides a Final Expungement Order dated October 26, 2015, expunging the June 2011 public nuisance violation, the March 2012 improper behavior violation that was dismissed and the June 19, 2013 simple assault charge that was dismissed. The appellant notes that the Medical Review Panel indicated that while she did display poor judgment on two occasions, there was no pattern of behavior difficulties at work or school and that she is mentally fit to effectively perform the duties of a County Correction Officer. Further, the appellant presents that she has been gainfully employed, volunteers for many charitable organizations, and is active in her church. In support of her appeal, she provides a letter of support from Nabil N. Kassem, Esq.

Although provided the opportunity, the appointing authority did not provide any additional argument or documentation for the Commission to review in this case.

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).

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 removal of 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 *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement." See *N.J.S.A. 2C:52-3* and *N.J.S.A. 2C:52-8*.

In the matter at hand, the record evidences that the appellant was evaluated by the appointing authority's psychological evaluator on January 21, 2013 and an evaluator of her choosing almost one year later, on January 15, 2014. However, neither the appellant's evaluator nor the Medical Review Panel's September 29, 2014 report note that she was charged on June 19, 2013 for simple assault. Thus, although the Medical Review Panel indicated that she displayed poor judgement on two occasions, this does not include the fact that she was arrested and charged after she submitted to the appointing authority's initial psychological evaluation. Indeed, aside from the charge on June 19, 2013 for simple assault, she was charged with several other matters prior to her psychological evaluation. In other words, the appellant had adverse involvement with law enforcement on multiple occasions, one

of which occurred during the initial selection process that was uncovered as a result of the updated background check. Although the appellant's arrests were for disorderly persons offense and cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that the appellant was involved in such activity reflects upon her character and her ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002). Moreover, while the Commission affords little weight to the matters that occurred prior to the appellant's initial psychological evaluation, it cannot ignore the June 19, 2013 charge that occurred afterward.²

Moreover, while the Commission is cognizant that an expungement can be considered the equivalent of evidence of rehabilitation, the appointing authority requested the removal of her name for an unsatisfactory background report based on the updated background check on January 9, 2015, more than ten months prior to when her arrest were expunged on October 26, 2015. Therefore, at the time the appointing made the request to remove her name on that basis, it had no evidence of rehabilitation. More significantly, the appellant's adverse contact with law enforcement during the original pendency of this matter is indicative of her exercise of poor judgement, which is not conducive to the performance of duties of a County Correction Officer. 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). 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. Given the circumstances of this case, the appellant's background does not demonstrate possession of these qualities.

Under the totality of the circumstances in this case, the appointing authority has presented sufficient basis to remove the appellant's name from the County Correction Officer (C9979M) eligible list.

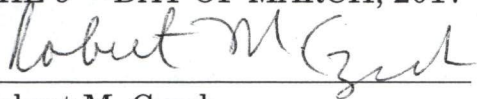
ORDER

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.

² The appellant's alleged unsatisfactory background relied upon by the appointing authority that occurred prior to its initial psychological evaluation of the appellant should carry little weight, as it should have been uncovered, and *relied upon*, by the appointing authority **prior** to subjecting the appellant to a psychological evaluation which carries a conditional offer of employment.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF MARCH, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: B.G.
Robert Jackson
Kelly Glenn