



STATE OF NEW JERSEY

In the Matter of Shawn Carter,
Medical Security Officer Recruit
(S0239T), Department of Health

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-3315

List Removal Appeal

ISSUED: DECEMBER 21, 2018 (JET)

Shawn Carter, represented by Arthur J. Murray, Esq., appeals the removal of his name from the Medical Security Officer Recruit (S0239T), Department of Health, eligible list on the basis of an unsatisfactory employment record.

The appellant took the open competitive examination for Medical Security Officer Recruit (S0239T), Department of Health, achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on February 5, 2018 (OS180081). 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 employment record.

Specifically, the appointing authority asserted that on December 23, 2017, the appellant was arrested and charged with Criminal Mischief – Damage Property \$500 or less in violation of *N.J.S.A. 2C:17-3A(1)* (dismissed). Additionally, the appointing authority indicated that the appellant did not timely report the arrest pursuant to its policy entitled - “Duty to Advise of Arrests and Convictions.” As a result, the appellant was removed from employment.¹

On appeal, the appellant asserts that he reported the arrest, and as such, he complied with the appointing authority’s procedures. In addition, the appellant states that, although the charges were filed against him on December 23, 2017, he was not aware of such charges until December 25, 2017. The appellant adds that,

¹ The appellant was serving as a non-permanent temporary employee at the time of his removal.

although he left various messages with respect to the charges with the Employee Relations Coordinator, he was on vacation at that time. However, he states that he verbally reported the charges to the Employee Relations Coordinator on December 30, 2017. The appellant states that at no time did the Employee Relations Coordinator inform him about the appointing authority's policy pertaining to the "Duty to Advise of Arrests and Convictions," and he did not instruct the appellant to follow up with a written report. The appellant explains that his father's then-wife filed a complaint that led to the charges against him. However, the charges were dismissed on August 1, 2018. Moreover, the appellant contends that the appointing authority does not always enforce the aforementioned policy to report arrests and convictions, as numerous employees continue to work despite having arrests and convictions on their records.

In support, the appellant provides a copy of cell phone records to show that he left a message for the Employee Relations Coordinator regarding the charges against him.² The appellant also provides a certification from his father, which indicates, among other things, that although his then-wife reported to the police that the appellant was involved in an incident which led to the charges against him, the appellant was not actually involved in the incident.

In response, the appointing authority maintains that the appellant was arrested on December 23, 2017 and failed to advise it of the incident pursuant to procedure. The appointing authority provides a copy of a form the appellant signed on August 14, 2014 entitled "Duty to Advise of Arrests and Convictions," which notified the appellant, among other things, that he was required to report to the appointing authority that he had been arrested. Moreover, the appointing authority asserts that the appellant was not a permanent employee and, as a such, he was terminated without a hearing due to his failure to report the arrest.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. *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. Further, *N.J.A.C.* 4A:4-4.7(a)11 allows the removal of an eligible's name from an eligible list for other valid reasons.

In this matter, the appointing authority maintains that the appellant's name should be removed due to an unsatisfactory employment record, as he was terminated from employment for failing to report that he was arrested as required.

² The appellant admits the cell phone bills belong to his father.

The appellant argues that the December 23, 2017 charges against him were dismissed and he timely reported the arrest to the appointing authority. He confirms that he verbally reported the incident on December 30, 2017. A review of the record reveals that the appellant was required to notify the appointing authority of the December 23, 2017 arrest within 48 hours of the incident. Although the appellant states that he was not aware of the charges until December 25, 2017 and he left a message for the Employee Relations Coordinator, such arguments are not persuasive. It was the appellant's responsibility to contact an employee at the appointing authority and make certain that the arrest was properly reported. The record reflects that the appellant signed the "Duty to Advise of Arrests and Convictions" dated August 14, 2014, which indicated that he was responsible for notifying the appointing authority of any arrests within 48 hours. Since the appellant admits in this matter that he did not verbally report the arrest until December 30, 2017, he clearly did not report the arrest as required. Although the appellant argues that he was not involved in the incident and the charges were dismissed, such information is of no moment. Additionally, the incident occurred less than two months prior to when the appellant's name was certified on the February 5, 2018 list (OS180081). Moreover, the appellant was removed from his position as a result of his failure to report the incident within 48 hours. Medical Security Officers work with vulnerable populations in mental health facilities and the appellant's inability to timely report the arrest evidences his lack of good judgement and inability to follow the rules. Additionally, the appellant did not possess a vested interest in the position as the only interest afforded a candidate on an eligible list is consideration for appointment while the list remains in effect. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

Accordingly, there is sufficient evidence to remove the appellant's name from the Medical Security Officer Recruit (S0239T), Department of Health, 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 DECEMBER, 2018



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