



**STATE OF NEW JERSEY**

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

In the Matter of D.J., Correctional  
Police Officer (S9988V and S9999U),  
Department of Corrections

List Removal Appeals

CSC Docket Nos. 2019-1648 and  
2019-2046

**ISSUED: OCTOBER 24, 2019 (DASV)**

D.J. appeals the removal of his name from the eligible list for Correctional Police Officer (S9988V), Department of Corrections (DOC), on the basis of unsatisfactory employment record, falsification of application, and failure to complete pre-employment processing. Additionally, the appellant appeals DOC’s request to remove his name from the Correctional Police Officer (S9999U), DOC, eligible list for medical unfitness to perform effectively the duties of the position. The appellant’s appeals have been consolidated herein.

By way of background, the appellant took the open competitive examination for Correctional Police Officer (S9988V), DOC, achieved a passing score, and was ranked on the resultant eligible list. The appellant’s name was certified by DOC. However, in disposing of the certification, DOC sought the removal of the appellant’s name due to an unsatisfactory employment record, falsification of application, and failure to complete pre-employment processing. Specifically, the appellant was notified by letter, dated December 7, 2018, that his name was removed from the (S9988V) eligible list because his background investigation revealed a termination from Sterling Securities in 2017 for excessive use of a cell phone on duty and time and attendance disciplinary actions and a termination from the “Newark Police Academy” in 2016. Additionally, DOC asserted that the appellant falsified his application because he indicated that he resigned in 2017 from Sterling Securities. He also allegedly failed to submit employment contact information and to follow instructions regarding social media accounts, changing his password after his home interview. The appellant filed an appeal of his removal with the Civil Service Commission (Commission). DOC also certified the appellant’s

name from the Correctional Police Officer (S9999U), DOC, eligible list.<sup>1</sup> In that case, the appellant was administered a medical examination. On or about January 15, 2019, the appellant was sent a letter from DOC, advising him that he was being removed from the Correctional Police Officer (S9999U), DOC, eligible list due to “Failure of Medical Exam: Monocular Vision.” The appellant also pursued an appeal of that removal.

On appeal, the appellant maintains that he resigned from Sterling Securities and was not terminated. He submits his letter of resignation. The appellant also explains that he was dismissed from the Essex County Police Academy in January 2016 and the Morris County Police Academy in September 2016 for failing to qualify in the use of firearms. He argues that although he was disqualified from these academies, it should not exclude him from being considered by any other law enforcement agency. Moreover, he disputes that he failed to provide employment information or follow instructions regarding his social media accounts. Regarding his removal from the Correctional Police Officer (S9999U), DOC, eligible list, the appellant states that his “right eye has full functionality, and more than compensates for the left eye deficiencies.” In support, the appellant presents a letter, dated February 6, 2019, from Dr. Michael Feinstein, a personal optometrist, indicating that the appellant had a tumor removed from his left eye which resulted in his loss of vision. However, Dr. Feinstein stated that the appellant “can see light and has peripheral vision. His right eye is nearsighted, and with correction, his vision is better than 20/20.”

In response, the appointing authority stands by its initial determination regarding the removal of the appellant’s name from the Correctional Police Officer (S9988V), DOC, eligible list, and submits supporting documentation. Of note is documentation that the appellant was “terminated” as a Police Officer with the City of Newark due to “failure of firearms training.” However, the appellant filed an appeal of his removal, effective September 19, 2016, as a Police Officer with the City of Newark. The parties settled the removal to a resignation in good standing, which the Commission acknowledged. *See In the Matter of [D.] [J.]* (CSC, decided March 27, 2018). With respect to the medical disqualification of the appellant from the Correctional Police Officer (S9999U), DOC, eligible list, the appointing authority states that the appellant was evaluated by Dr. Donna Reger, a State-authorized physician, and was found to have not met the minimum visual acuity requirements for the position. DOC indicates that “visual acuity must be correctable to 20/30, and may not exceed 20/100 uncorrectable both eyes.” Further, in a letter dated

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<sup>1</sup> It is noted that the Law Enforcement Examination (S9999U) eligible list promulgated on March 29, 2017 and expires on March 30, 2020, The Correctional Police Officer (S9988U), DOC, eligible list promulgated on March 30, 2017 and expired on June 18, 2019. The Correctional Police Officer (S9988V), DOC, eligible list promulgated on September 28, 2017 and expired on September 27, 2019. Pursuant to *N.J.A.C. 4A:4-4.3(b)*, the Division of Agency Services approved the use of the Law Enforcement Examination (S9999U) eligible list as appropriate for Correctional Police Officer since DOC exhausted the Correctional Police Officer, DOC, eligible lists.

February 22, 2019, Dr. Reger confirms that, on examination, the appellant had no vision in his left eye. Additionally, Dr. Reger refers to a November 9, 2018 note from Dr. Feinstein, in which he stated that the appellant only has light perception in his left eye due to the retinal tumor. Moreover, the appointing authority indicates that for firearms training, “manual dexterity is required, and there may be problems if any fingers or limbs are missing, or if there are problems with vision.” Thus, it maintains that it properly denied the appellant employment.

## CONCLUSION

The appellant was initially removed for consideration as a Correctional Police Officer due to issues found in his background. However, the appellant was administered a medical examination. In that regard, the Americans with Disabilities Act (ADA), 42 *U.S.C.A. sec.* 12112(d)(3), provides that 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. *See also N.J.A.C.* 4A:4-6.5(b) (An appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment).

Therefore, in the appellant’s case, his removal from the Correctional Police Officer (S9988V), DOC, eligible list due to background issues is, in essence, moot since a conditional offer of employment was made from the Correctional Police Officer (S9999U), DOC, eligible list, which was utilized in conjunction with the Correctional Police Officer (S9988V) eligible list that had been exhausted. Regardless, as explained below, the appointing authority has presented a sufficient basis to remove the appellant’s name from the Correctional Police Officer (S9999U), DOC, eligible list, due to medical reasons. Therefore, since the Commission finds that the appellant’s medical condition precludes him from performing effectively the duties of a Correctional Police Officer, the appellant’s appeal of his removal from the Correctional Police Officer (S9988V), DOC, eligible list has been rendered moot. Accordingly, it is not necessary to review the issues presented in that removal.

*N.J.A.C.* 4A:4-6.3(b) states that the appointing authority shall have the burden of proof in medical or psychological disqualification appeals. In the present case, there is no dispute that the appellant has monocular vision. Although the appellant’s optometrist, Dr. Feinstein, indicates that the appellant can see light and

has peripheral vision, he confirms that the appellant had a tumor in his left eye removed which resulted in the loss of vision. Dr. Reger, the appointing authority's physician, had similar findings. The issue of monocular vision has been reviewed in the context of law enforcement positions. In *In the Matter of Kenneth Krycicki* (MSB, decided January 11, 2006), the candidate's removal from a Sheriff's Officer eligible list was upheld where his monocular vision rendered him medically unable to perform effectively the duties of the position. In that case, the Merit System Board (Board)<sup>2</sup> indicated that safety sensitive positions generally require a higher standard of visual acuity. The Board also referred to a Med-Tox Health Services report, which opined that monocular vision not only interferes with depth perception but also diminishes peripheral vision.

As set forth in the job specification, a Correctional Police Officer is responsible for the appropriate care and custody of a designated group of inmates and does work which will provide practical custody experience. Examples of work include learning the proper usage, security, integrity, and care for carrying firearms and the responsibility of maintaining firearms and other restraints and defense equipment while performing assigned duties; assisting in patrolling assigned areas of the buildings and grounds and making required reports by telephone, punch clock, or other means; making periodic counts of inmates and reporting the whereabouts of absent inmates; assisting in ensuring that contraband articles are not concealed on the bodies of the inmates or in any part of the institution, and that institution property and equipment is kept in a clean, safe, and orderly condition; noting suspicious persons and conditions and takes appropriate measures in reporting significant actions, occurrences, and conditions in the buildings and on the grounds; reporting conditions constituting dangers and hazards and taking the necessary steps to ensure safe and orderly conditions; and when assigned to sentry duty, observing everything significant that takes place within sight and hearing of the post, reporting unusual events to supervisory personnel, and preventing disorders and escapes. The foregoing responsibilities clearly establish that visual acuity is essential to perform the duties of a Correctional Police Officer. DOC's medical standard that "visual acuity must be correctable to 20/30, and may not exceed 20/100 uncorrectable both eyes" is thus reasonable. Since the appellant suffers from monocular vision, he cannot meet this standard.<sup>3</sup> Therefore, the appointing authority has met its burden of proof that the appellant is not medically fit for a Correctional Police Officer position. Accordingly, under these circumstances, the appellant's appeal is denied.

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<sup>2</sup> On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Commission.

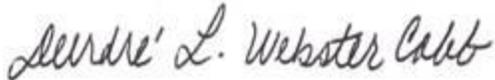
<sup>3</sup> The appellant admittedly was unable to pass a firearms qualification in two different academies.

**ORDER**

The Commission finds that the appointing authority has met its burden of proof that D.J. is not medically fit to perform effectively the duties of a Correctional Police Officer, and therefore, the Commission orders that his name be removed from the Correctional Police Officer (S9999U), DOC, eligible list. It is further ordered that the appellant's appeal of his removal from the Correctional Police Officer (S9988V), DOC, eligible list be dismissed as moot.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 23<sup>RD</sup> DAY OF OCTOBER, 2019



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