



STATE OF NEW JERSEY

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

In the Matter of R.G., Correctional
Police Officer (S9988V), Department
of Corrections

List Removal Appeal

CSC Docket No. 2019-3362

ISSUED: OCTOBER 25, 2019 (HS)

R.G. appeals the removal of his name from the eligible list for Correctional Police Officer¹ (S9988V), Department of Corrections on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open-competitive examination for Correctional Police Officer (S9988V), which had a closing date of May 31, 2017. The resulting eligible list promulgated on September 28, 2017 and expired on September 27, 2019. The appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that as a result of a May 23, 1998 incident, the appellant was charged as a juvenile with two counts of possession of a controlled dangerous substance (CDS) in violation of *N.J.S.A. 2C:35-10a(1)*; manufacturing, distributing or dispensing a CDS in violation of *N.J.S.A. 2C:35-5*; distribution on or within 1,000 feet of school property in violation of *N.J.S.A. 2C:35-7*; and failure to deliver a CDS to law enforcement in violation of *N.J.S.A. 2C:35-10c*. The appellant was adjudicated delinquent on one count of possession of a CDS in violation of *N.J.S.A. 2C:35-10a(1)*. The remaining charges were dismissed.

On appeal to the Civil Service Commission (Commission), the appellant notes that he has not run into anymore trouble since 1998. The appellant states his belief that events that happen when one is a child should not affect one's future.

¹ Pursuant to *N.J.S.A. 11A:2-11.1*, effective May 1, 2018, the title of Correction Officer Recruit has been retitled to Correctional Police Officer.

In response, the appointing authority requests that its decision to remove the appellant's name from the eligible list be sustained as it believes he is not a suitable candidate.

In reply, the appellant contends that an incident that occurred in 1998 when he was a 14-year-old juvenile should not preclude him from moving forward in the hiring process. He states that he has worked in a pharmacy for the last nine years. In support, the appellant submits a copy of his Board of Pharmacy-issued license to practice as a Pharmacy Technician.²

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 that includes a conviction for a crime that 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 Commission or designee may determine. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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).

Further, it is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v.*

² The appellant also claims that an appeal he filed in 2014 remains pending. However, he provides no evidence of this earlier-filed appeal, and a review of agency records reveals no such earlier-filed appeal.

Police Department, City of Camden, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). *N.J.S.A.* 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a “crime” engenders. However, the Commission can consider the circumstances surrounding an eligible’s arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible’s character and the eligible’s ability to perform the duties of the position at issue. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant’s juvenile arrest records were properly disclosed to the appointing authority when requested for purposes of making a hiring decision.

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 Commission to remove 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 name from an eligible list was in error.

While the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter indicates that the appellant’s removal from the subject eligible list is unwarranted. The appellant’s adjudication of delinquency resulted from an incident that occurred more than 19 years before the examination closing date when he was a juvenile of only 14 years of age. The appellant has no other negative interactions with law enforcement. Further, the appellant has proffered evidence of rehabilitation, as he has been licensed by the Board of Pharmacy for practice as a Pharmacy Technician. *See N.J.A.C.* 13:39-6.6(a)6 (providing that evidence of good moral character is an ongoing requirement for registration as a Pharmacy Technician). Accordingly, based on the totality of the record in this matter, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the eligible list for Correctional Police Officer (S9988V), Department of Corrections be revived in order for R.G. to be considered for appointment at the time of the next certification for prospective employment opportunities only.

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 23RD DAY OF OCTOBER, 2019



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