



STATE OF NEW JERSEY

In the Matter of J.K., Correctional
Police Officer (S9988V), Department
of Corrections

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

CSC Docket No. 2020-119

List Removal Appeal

Revised

ISSUED: OCTOBER 25, 2019 (SLK)

J.K., represented by Thomas Masciocchi, Esq., appeals his removal from the eligible list for Correctional Police Officer (S9988V), Department of Corrections on the basis that he possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Correctional Police Officer (S9988V), which had a May 31, 2017 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal background. Specifically, the appointing authority indicated that in 2012, the appellant was charged with 2nd degree aggravated assault, 3rd degree possession of a weapon for unlawful purposes and 4th degree unlawful possession of a weapon. This resulted in the appellant being adjudicated delinquent and sentenced to three years of confinement.¹

On appeal, the appellant states that he entered a voluntary plea of adjudication of delinquency and was not criminally convicted. He presents that these matters were expunged on August 3, 2018. The appellant initially argues the appointing authority is not a law enforcement agency and therefore is not entitled to access juvenile records under State law. He further argues that if the appointing authority is considered a law enforcement agency, the use of juvenile records is

¹ On appeal, documentation indicates that the appellant was actually confined from June 5, 2012 to January 29, 2013.

limited to the review of applications to purchase firearms. Additionally, the appellant submits a character reference from a reverend.

In response, the appointing authority indicates that the appellant's adjudication of delinquency as described above meets its criteria for removal. Further, it highlights that his adjudication of delinquency led to his confinement in a juvenile facility for seven months. Additionally, during pre-employment processing, its search of the appellant's background did not indicate that the charges had been expunged. Moreover, it presents that State law and regulations indicate that the Department of Corrections is a law enforcement agency and is permitted to use juvenile and expunged records when considering employment for the subject title, which is a law enforcement title.

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 (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).

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. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision. However, *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. Accordingly, the disability arising under *N.J.A.C.* 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal. However, it is noted that although it is clear that the appellant was never convicted of a crime, he has been arrested on more than one occasion. While an arrest is not an admission of guilt, it may warrant removal of an eligible’s name where the arrest adversely relates to the employment sought. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

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.

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In the instant matter, a review of the record indicates that the appointing authority had a valid reason to remove the appellant’s name from the list. Specifically, in 2012, the appellant was charged with 2nd degree aggravated assault, 3rd degree possession of a weapon for unlawful purposes and 4th degree unlawful possession of a weapon. This led to him being adjudicated delinquent. Further, the serious nature of the offenses is demonstrated by the appellant’s confinement in a juvenile facility from June 5, 2012 to January 29, 2013. It is noted that the subject examination closing date was only a little more than four years after the end of the appellant’s confinement. Additionally, a review of the appellant’s employment application indicates that he continued to have negative interactions with law as he was charged with simple assault, at age 22 in 2016, and with the violation of a local noise ordinance, at age 24 in 2018, which is after the subject examination closing date. Moreover, other than a character reference and an expungement that was submitted after the appointing authority performed its background investigation, the appellant has not presented any other evidence of rehabilitation. The Commission finds that the appellant’s expungement is not a factor as the expungement did not occur until after the appointing authority made its decision, expungements do not automatically prohibit an appointing authority from rejecting an eligible for a law enforcement position, and there was insufficient time for the appellant to demonstrate rehabilitation. *See In the Matter of Anthony Lewis* (CSC, decided March 6, 2019). This is especially so as the appellant has continued to have negative interactions with the law. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officers, like 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 Correctional Police Officers to present a personal background that exhibits respect for the law and rules.

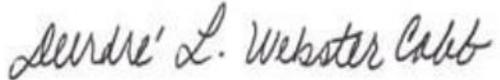
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Correctional Police Officer (S9988V), Department of Corrections eligible list.

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 23rd DAY OF OCTOBER, 2019



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