



**STATE OF NEW JERSEY**

In the Matter of Jamal Orikat,  
Correctional Police Officer (S9999U),  
Department of Corrections

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

CSC Docket No. 2020-298

List Removal Appeal

**ISSUED: OCTOBER 25, 2019 (SLK)**

Jamal Orikat, represented by David Altieri, Esq., appeals his removal from the eligible list for Correctional Police Officer (S9999U), Department of Corrections on the basis that he possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Correctional Police Officer (S9999U), which had an August 31, 2016 closing date, achieved a passing score, and was ranked on the subsequent eligible list, which expires on March 30, 2020. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal background. Specifically, the appointing authority indicated that the appellant was charged with a 3<sup>rd</sup> degree Escape and Possession/Consumption of Alcohol Underage offenses in 2010, which were disposed of through a successful diversionary program.

On appeal, the appellant states that he was not convicted of a crime nor was he adjudicated delinquent. He presents that due to the minor nature of the offenses, he went before a hearing officer and not a judge and not even the County Prosecutor was there. The appellant indicates that the hearing officer dismissed the initial charges on the spot. Instead, he admitted to underage consumption of alcohol, which if committed by an adult, would be a disorderly persons offense, which is not a crime. The hearing officer then placed the appellant in a “period of adjustment” for three months, which is one of the lightest offenses one can receive in juvenile court. Once the appellant complied with the hearing officer’s decision, the charge was dismissed.

The appellant argues that these juvenile charges were so inconsequential that they should not cause the appointing authority any concern about his ability to perform the duties of the subject title.

In response, the appointing authority presents that on page 18 of his employment application, the appellant stated, "When I was a juvenile, I was detained for underage possession/consumption of alcohol. When I was brought to police headquarters, I fled from police custody and I was later apprehended." However, in response to other questions on the application, the appellant failed to list all juvenile matters and provide court disposition from each court including the 2010 charges. Therefore, it concludes that the appellant was not forthright in responding to inquiries into his criminal history. Concerning the appellant's statement that the 2010 incident was not a crime, it notes that a candidate can be removed for juvenile offenses and its criteria for removal includes juvenile offenses that occurred within the past seven years. It argues that it has "other sufficient cause" to remove the appellant as underage drinking and fleeing police custody are attributes not acceptable for the subject title.

In reply, the appellant indicates that since he did disclose the incident on one part of his application, the fact the he did not re-list the 2010 juvenile incident in response to another question on the application does not imply that he was not forthright. Additionally, he presents that the charges for the 2010 juvenile incident were dismissed prior to the three-month period of adjustment that he received. Further, the period of adjustment proceeded only the disorderly persons offense of underage consumption of alcohol. Finally, the appellant argues that applicable regulations are the standard for removal from the list and not the appointing authority's criteria.

## 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.

Participation in a diversionary program is neither a conviction nor an acquittal. See *N.J.S.A.* 2C:43-13(d). See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of*

*Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the diversionary program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, 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. Thus, the appellant's arrest and entry into the diversionary program could still be properly considered in removing his or her name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his diversionary program).

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. 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:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Civil Service Commission (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 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 appellant was charged with juvenile offenses in 2010 related to an incident where the appellant engaged in underage drinking and then fled police custody. Thereafter, the appellant went before a hearing officer and admitted to underage drinking. The initial charges were dismissed by the hearing officer and the admitted underage consumption of alcohol charge was dismissed after the appellant successfully completed a three-month "period of adjustment." While the Commission is aware of the high standards for a Correctional Police Officer, a law enforcement title, this incident was a minor and isolated incident which took place while the appellant was a juvenile. Further, this incident took place nearly six years prior to the August 31, 2016 closing date. As such, there was sufficient passage of time for the appellant to have demonstrated rehabilitation. Therefore, the Commission finds that the appellant cannot be removed from the subject list for an unsatisfactory criminal background. Finally, while the appellant may not have listed this incident in all locations on his application, he did disclose the incident on the application. As such, he did not falsify his application. *See In the Matter of Lance Williams* (CSC, decided May 7, 2014).

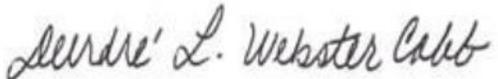
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient cause for removing his name from the Correctional Police Officer (S9999U), Department of Corrections eligible list.

### ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the Correctional Police Officer (S9999U), Department of Corrections eligible list, 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 23<sup>rd</sup> DAY OF OCTOBER, 2019



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Jamal Orikat  
David Altieri, Esq.  
Veronica Tingle  
Kelly Glenn