



STATE OF NEW JERSEY

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

In the Matter of L.O., Correctional
Police Officer (S9988T), Department
of Corrections

List Removal Appeal

CSC Docket No. 2019-3138

ISSUED: OCTOBER 25, 2019 (HS)

L.O. appeals the removal of her name from the eligible list for Correctional Police Officer¹ (S9988T), 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 (S9988T), which had a closing date of January 8, 2015. The resulting eligible list promulgated on July 23, 2015 and expired on July 22, 2017. The appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that on December 23, 2002, the appellant was adjudicated delinquent on a charge of aggravated assault in violation of *N.J.S.A. 2C:12-1b(1)*.

On appeal to the Civil Service Commission (Commission), the appellant states that she was 14 years old at the time of her aggravated assault charge. She explains that she had been bullied relentlessly and finally fought back.² The

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.

² The appellant also states that she was convicted of simple assault in 2005. However, aside from the appellant's admission, there is no documentation in the record to corroborate that such conviction occurred.

appellant states that she has become a fully productive citizen and has a full-time job.³

In response, the appointing authority requests that its decision to remove the appellant's name from the eligible list be sustained as it believes she is not a suitable candidate. In support, it submits a copy of the appellant's preemployment application, among other documents.

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. 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

³ According to the appellant's preemployment application, she has been employed with the United States Postal Service full-time since 2014. She also graduated from high school in 2007 and has earned some college credits.

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 her 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 occurred more than 12 years before the examination closing date when she was a juvenile of only 14 years of age. She explains that the adjudication resulted from a situation in which she was being bullied. Further, the appellant has proffered evidence of rehabilitation, as she graduated from high school in 2007, completed some college, and has held a full-time position with the United States Postal Service since 2014. Accordingly, based on the totality of the record in this matter, the appellant has met her burden of proof and the appointing authority has not shown sufficient justification for removing her name from the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the eligible list for Correctional Police Officer (S9988T), Department of Corrections be revived in order for L.O. 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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