



STATE OF NEW JERSEY

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

In the Matter of Daniel Siniscalchi,
Correctional Police Officer (S9988V)
Department of Corrections

List Removal Appeal

CSC Docket No. 2019-1738

ISSUED: OCTOBER 29, 2019 (ABR)

Daniel Siniscalchi appeals his removal from the Correctional Police Officer (S9988V), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, applied for and passed the open competitive examination for Correctional Police Officer (S9988V), which had a closing date of May 31, 2017. The subject eligible list promulgated on September 28, 2017 and expired on September 27, 2019. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal background. Specifically, the appointing authority stated that in 2009, the appellant was found guilty of assault with the intent to cause physical injury, a third degree offense,¹ based upon a December 22, 2008 incident in the State of New York.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the circumstances of his conviction, the positive changes he has made since his 2009 conviction at age 21, and his desire to give something back to the community warrant his restoration to the subject eligible list. At the outset, he maintains that he was convicted of assault because a friend falsely accused him of putting his hands on her and he was unable to afford a lawyer to help prove his innocence. He submits that since that time he has learned from his mistakes and that he has proven himself to be a diligent worker and a devoted father. The

¹ It is noted that assault in the third degree is considered a Class A misdemeanor under New York law. See N.Y. PENAL LAW §120.00.

appellant also states that he has begun to procure an expungement of the subject offense from his record. The appellant submits letter of support from three individuals, including two of his former supervisors with the Cape Regional Medical Center and a retired Deputy Warden.

In response, the appointing authority states that it stands by its decision to remove the appellant's name from the subject eligible list on the basis of his 2009 assault conviction. In this regard, it submits that its criteria for removal permits it to remove any eligible who has been convicted of any offense which is a crime² of the fourth degree or higher and it observes that there is no dispute that the appellant was convicted of assault in the third degree in 2009. Accordingly, it asserts that the appellant's record is inconsistent with the standards expected of a law enforcement officer.

A review of the appellant's pre-employment application indicates that he has been employed continuously since June 2014 and that he has served with his current employer, Cape Regional Medical Center, since October 2016.

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.

Additionally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C.* 4A:4-4.7(a)4, the fact that an eligible was involved in such activity may reflect upon the eligible's character and ability to perform the duties of the position at issue. *See In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here,

² It is noted that the analogous offense under New Jersey law is simple assault, which is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense. *See N.J.S.A.* 2C:12-1a. Disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State. *N.J.S.A.* 2C:1-4(b). Conviction of such an offense shall not give rise to any disability or legal disadvantage based on conviction of a crime. *Id.*

while the appellant was arrested for a number of disorderly persons offenses which did not rise to the level of crimes, the appellant's arrests could still be considered in light of the factors noted in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine whether they adversely related to the employment sought.

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 or her name from an eligible list was in error.

In the instant matter, the appointing authority removed the appellant's name from the subject eligible list because of a 2009 conviction for assault in the third degree in the State of New York. Initially, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). As such, it is not bound by the appointing authority's criteria for removal. Nevertheless, the Commission observes that the appellant's assault conviction does not meet the appointing authority's proffered standard of a "crime of the fourth degree or higher" (emphasis added). In this regard, the Commission notes that New York law classifies the appellant's assault conviction as a misdemeanor and that under the analogous New Jersey simple assault statute, *N.J.S.A. 2C:12-1a*, it would have been classified as a disorderly persons offense. As a disorderly persons offense, it would not be considered a "crime" under the State Constitution. *See N.J.S.A. 2C:1-4*.

Moreover, the Commission finds that a review of the factors set forth in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* fails to support the appellant's removal from the subject eligible list. The appointing authority has not provided any evidence that it considered the severity and underlying circumstances of the incident. Here, the appellant was relatively young at the time of the December 2008 incident, being 21 years old when it occurred. Moreover, the December 2008 incident was an isolated event and the record does not indicate that the appellant has had any other negative interactions with law enforcement in the nearly 11 years that have passed since it occurred. Furthermore, the appellant's continuous employment since 2014 and the letters of recommendation he has furnished from two former supervisors and a retired Deputy Warden evidence his rehabilitation. Accordingly, the foregoing demonstrates that the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient grounds to remove the appellant's name from the eligible list for Correctional Police Officer (S9988V), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted and the list for Correctional Police Officer (S9988V), Department of Corrections be revived in order for the appellant 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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