



**STATE OF NEW JERSEY**

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

In the Matter of L.T., Correctional  
Police Officer (S9988V), Department  
of Corrections

List Removal Appeal

CSC Docket No. 2019-3355

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

L.T., represented by Raymond C. Staub, Esq., appeals the removal of his name from the eligible list for Correctional Police Officer<sup>1</sup> (S9988V), Department of Corrections on the bases of an unsatisfactory criminal record and falsification of the preemployment application.

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 and falsification of his preemployment application. Specifically, the appointing authority asserted that on November 9, 2015, the appellant was charged with marijuana possession in violation of *N.J.S.A. 2C:35-10a(4)*, a disorderly persons offense, for which he received a conditional discharge. In addition, the appellant failed to disclose that on August 9, 2012, he was charged as a juvenile with obstructing the administration of law in violation of *N.J.S.A. 2C:29-1*, which was dismissed.

On appeal to the Civil Service Commission (Commission), the appellant states that he is a responsible adult as he has been at his present job with a security firm for six years.

<sup>1</sup> 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 indicates that it stands with its original decision to remove the appellant's name from the eligible list. It notes that the appellant's arrest for marijuana possession occurred two years before the examination when he was 21 years old. It maintains that the instructions in the preemployment application clearly required the appellant to disclose his juvenile charge but that he failed to do so. It is noted that the application stated that "it is mandatory that you disclose all charges" including dismissed charges and all juvenile matters and that "everything must be disclosed on this application regardless of the outcome." In support, it submits a copy of the appellant's preemployment application.

In reply, the appellant indicates that his juvenile charge was dismissed without a court appearance. As to the marijuana possession charge, the appellant explains that he admitted to possessing a small amount when stopped by police, turned over the marijuana, and was later allowed into the conditional discharge program. He emphasizes that he has no criminal convictions. The appellant argues that with the recent legislative push toward the legalization of marijuana and the immediate expungement of past convictions, it is clear that the intent is not to handicap people from obtaining employment. As such, he requests that his name be restored to the eligible list.

### CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an eligible list when he has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

*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).

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, as the appellant was arrested for a disorderly persons offense, the offense did not rise to the level of a crime. Nevertheless, the appellant's arrest 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 it adversely related to the employment sought.

Pursuant to *N.J.S.A.* 2C:36A-1, under a conditional discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. See *State v. Marzolf*, 79 *N.J.* 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's conditional discharge could still be properly considered in removing his name from the subject eligible list.

*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.

Upon review of the record, it is clear that the appellant did not disclose his juvenile charge on his preemployment application. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correctional Police Officer, to ensure that his preemployment application is a complete and accurate depiction of his history. In this regard, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. An applicant must be held accountable for the accuracy of the information submitted on an application for employment and risks omitting or forgetting any information at his peril. *See In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991) (An honest mistake is not an allowable excuse for omitting relevant information from an application). Here, the appellant's omission is sufficient cause to remove his name from the eligible list. The instructions in the preemployment application clearly indicated that applicants were required to disclose all charges, even if dismissed, and all juvenile matters. The type of omission presented is clearly significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Indeed, an appointing authority's assessment of a prospective employee could be influenced by such information, especially for a position in law enforcement. Therefore, the information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his application. The appellant's failure to disclose the information is indicative of his questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correctional Police Officer.

In addition, the appointing authority's decision to remove the appellant's name from the eligible list based on his arrest for marijuana possession was also justified. That charge was resolved via a conditional discharge, and the arrest occurred less than two years before the examination closing date when the appellant was an adult.

The Commission notes that a Correctional Police Officer is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the 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 prison guards to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's arrest for marijuana possession and

falsification of his preemployment application provide sufficient bases to remove his name from the subject 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 23<sup>RD</sup> DAY OF OCTOBER, 2019



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