



STATE OF NEW JERSEY

In the Matter of Jesse Vacante,
Correctional Police Officer (S9999U),
Department of Corrections

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

CSC Docket No. 2020-434

List Removal Appeal

ISSUED: OCTOBER 25, 2019 (SLK)

Jesse Vacante 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. 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 criminal trespassing and disorderly conduct in 2013, which were disposed of through the successful completion of a diversionary program. Additionally, the appellant was charged with harassment in 2012, which was also disposed of through the successful completion of a diversionary program.

On appeal, the appellant states that he takes responsibility for his past actions. However, he presents that he has not had any criminal offenses since 2013. Additionally, he indicates that he has joined the Marines, is pursuing a degree in Criminal Justice, and is a full-time Security Officer for the George Washington Bridge. The appellant highlights that he passed a background check for employment with both the Marines and the George Washington Bridge. He argues that he is not the same person that he was six years ago and requests to be given an opportunity.

In response, the appointing authority presents that the appellant acknowledges that he committed the aforementioned offenses. It notes that these charges were only dismissed after he completed the diversionary programs. It highlights its criteria for removal indicates that candidates who have committed offenses that are dismissed after the completion of a diversionary program within seven years of the promulgation of the Civil Service list are removed.

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.

Further, 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). 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 a diversionary program could still be properly considered in removing his 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).

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 Civil Service Commission (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, the record indicates that the appellant was charged with multiple offenses in 2012 and 2013 and these matters were dismissed after the successful completion of diversionary programs. While the Commission appreciates the appellant's efforts to change his life since these incidents, as the subject examination closing date was August 31, 2016, there was insufficient time for the appellant to demonstrate rehabilitation. 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 municipal 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.

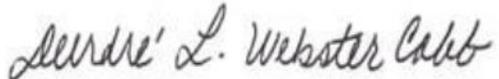
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Correctional Police Officer (S9999U), Department of Corrections eligible list. The Commission notes, however, that with the further passage of time, and absent any further adverse incidents, the appellant's background as presented in this matter will be insufficient to remove his name from future similar lists.

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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