



**STATE OF NEW JERSEY**

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

In the Matter of A.F., Correctional  
Police Officer (S9999U), Department  
of Corrections

List Removal Appeal

CSC Docket No. 2019-3479

**ISSUED: NOVEMBER 8, 2019** (HS)

A.F. appeals the removal of his name from the eligible list for Correctional Police Officer<sup>1</sup> (S9999U), Department of Corrections on the bases of unsatisfactory criminal and driving records.

The appellant, a non-veteran, took and passed the open-competitive examination for Correctional Police Officer (S9999U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 29, 2017 and expires on March 30, 2020.<sup>2</sup> The appointing authority requested the removal of the appellant’s name due to unsatisfactory criminal and driving records. Specifically, the appointing authority asserted that the appellant was found guilty of disorderly conduct in violation of *N.J.S.A. 2C:33-2a(1)* in 2016. With respect to the appellant’s driving record, the appointing authority asserted that the appellant failed to appear in court twice “within the seven (7) years of the promulgated Civil Service List;” had eight points on his driving record at the time of his processing; and had two convictions for driving with a suspended license “within (7) seven years of the promulgated Civil Service List.”

On appeal to the Civil Service Commission (Commission), the appellant maintains that he was not found guilty of disorderly conduct in violation of *N.J.S.A. 2C:33-2a(1)*. He explains that on June 4, 2016, brass knuckles were found in his carry-on bag prior to a flight. The brass knuckles were removed, and he continued

<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.

<sup>2</sup> The eligible list was extended one year to March 30, 2020.

onto his flight. He later received a summons indicating an original charge of possession of a prohibited weapon in violation of *N.J.S.A. 2C:39-3e*, a fourth-degree crime, which was amended to disorderly conduct in violation of *N.J.S.A. 2C:33-2a(1)*, a petty disorderly persons offense. The charge was dismissed on August 23, 2016, and all records concerning the charge were expunged on November 3, 2016. Turning to the issue of his driving record, the appellant states that as of May 14, 2019, his five-year driver history abstract showed that he had two points. He also denies that he has ever failed to appear in court when notified or had his license suspended. In support, the appellant submits copies of his summons for the amended charge of disorderly conduct dated June 4, 2016; a letter from the Newark Municipal Court indicating that the charge was dismissed on August 23, 2016; his expungement order; and his five-year driver history abstract dated May 14, 2019. The abstract indicates eight violations between July 2014 and October 2018 including improper operation on highways with marked lanes; unsafe operation of a motor vehicle; delaying traffic; failure to wear a seat belt; no license, registration or insurance identification in possession; open container in a motor vehicle; and careless driving. The three most recent of these violations are dated August 20, 2017, September 22, 2018 (the open container violation) and October 22, 2018 respectively.

In response, the appointing authority stands with its original decision to remove the appellant's name from the eligible list. In support, the appointing authority submits documentation from the Promis/Gavel system<sup>3</sup> and driver records pertaining to one T.L.

In reply, the appellant reiterates that he was not found guilty of disorderly conduct and that the appointing authority has mischaracterized his driving history. He emphasizes that the driver records the appointing authority submitted concern a different individual, T.L.

## CONCLUSION

*N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)*<sup>4</sup> 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;

---

<sup>3</sup> The Promis/Gavel documentation indicates that the appellant's charge for possession of a prohibited weapon was downgraded to disorderly conduct and remanded to municipal court but does not support that the appellant was found guilty.

- 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).

*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. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). *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.

At the outset, the Commission accepts that the appellant was not found guilty of disorderly conduct as the municipal court letter he provides clearly indicates that the charge was dismissed and there is no documentation in the record to the contrary. The Commission also accepts that the appointing authority did not submit any driver records that pertained to the appellant as those records it did submit relate to another individual, T.L. Still, a review of the record indicates that the removal of the appellant's name from the subject eligible list is justified. In this regard, less than three months before the examination closing date, the appellant was charged based on an incident in which brass knuckles were found in his carry-on bag prior to a flight. In addition, the driver history abstract the appellant himself submits reflects several recent violations between July 2014 and October

2018 that reveal a persistent disregard for the motor vehicle laws, behavior that is incompatible with the duties of a law enforcement officer. The last three violations, one of which was an open container violation, in fact occurred during the life of the eligible list. The incident underlying the appellant's disorderly conduct charge and his driving record are indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Correctional Police Officer. It is recognized 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, there is a sufficient basis to remove the appellant's 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 6<sup>TH</sup> DAY OF NOVEMBER, 2019



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

- c. A.F.  
Elizabeth Whitlock  
Kelly Glenn