



**STATE OF NEW JERSEY**

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

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

List Removal Appeal

CSC Docket No. 2020-118

**ISSUED: DECEMBER 23, 2019** (HS)

T.T. appeals the removal of his name from the eligible list for Correctional Police Officer<sup>1</sup> (S9999U), 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 (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 an unsatisfactory criminal record. Specifically, the appointing authority asserted that as a result of a March 3, 2012 incident, when the appellant was 15 years old, he was charged as a juvenile with shoplifting in violation of *N.J.S.A. 2C:20-11c(3)*, which was diverted and ultimately dismissed in 2016 with a lecture.

On appeal to the Civil Service Commission (Commission), the appellant highlights that he was not found guilty, and his case was dismissed with a lecture and without any further conditions.

In response, the appointing authority stands with its original decision to remove the appellant's name from the eligible list. In support, it submits copies of the appellant's preemployment application and documentation from the Family

<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.

Automated Case Tracking System. It is noted that the appellant indicated on his preemployment application that he graduated from high school in 2014; earned an Associate's degree; completed Auxiliary Police training; and holds a firearm permit. The appellant indicated that he is currently employed as a Pharmacy Technician and serves as an Auxiliary Police Officer. He has also previously been employed as an Emergency Medical Technician (EMT).

## 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 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 his 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 juvenile charge was diverted and dismissed with a lecture. Additionally, the appellant was 15 years old at the time of the underlying incident, which represents his only negative interaction with law enforcement. Further, the appellant has proffered evidence of rehabilitation, as he graduated from high school in 2014; earned an Associate's degree; completed Auxiliary Police training; holds a firearm permit; currently works as a Pharmacy Technician and serves as an Auxiliary Police Officer; and has worked as an EMT. Accordingly, based on the totality of the record in this matter, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the subject eligible list. Nonetheless, the appellant's background would be a sufficient basis to bypass him.

### **ORDER**

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the eligible list for Correctional Police Officer (S9999U), Department of Corrections for prospective employment opportunities.

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 18<sup>TH</sup> DAY OF DECEMBER, 2019



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