



STATE OF NEW JERSEY

In the Matter of Brian T. Cooke,
Police Officer (S9999U),
Deptford Township

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

CSC Docket No. 2018-3282

List Removal Appeal

ISSUED: FEBRUARY 22, 2019 (JET)

Brian T. Cooke appeals the removal of his name from the Police Officer (S9999U), Deptford Township eligible list on the basis of an unsatisfactory background.

The appellant took the open competitive examination for Police Officer (S9999U), Deptford Township, achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on March 29, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory background report. Specifically, in April 2003, he was charged with Distribution of a Controlled Dangerous Substance (CDS), Possession of CDS, and Failure to give CDS to Law Enforcement in Deptford Township which was dismissed after completing a conditional discharge. On April 29, 2003, the appellant was charged with Failure to Turn CDS Over to Police in violation of *N.J.S.A. 2C:35-10C* which was merged with another charge; on April 29, 2003, the appellant was charged with Possession of CDS in violation of *N.J.S.A. 2C:35-10A(4)* (dismissed), and he completed a diversionary program. The appellant was charged with Simple Assault (Domestic Violence) in Runnemede which was later dismissed. The appellant was served with a Final Restraining Order from February 24, 2004 to February 27, 2006. In 2010, the appellant was charged in Runnemede with Disorderly Conduct due to an altercation and received two special complaint summonses for Disorderly Conduct and Public Urination in October 2010. Although the aforementioned charges were expunged, the appointing authority indicated that the appellant did not have a

suitable background for law enforcement employment, and as such, he was removed from the list.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he has been sufficient rehabilitated due to the amount of time that has passed since the incidents occurred. Specifically, he explains that in 2003, he completed a Conditional Discharge program, and he did have any repeat offenses. In 2006, he joined the United States Air Force, and he is currently serving in the Air National Guard. He states that he has been deployed in Iraq, Afghanistan and South Korea. Further, the appellant contends that he has mentored his peers. Finally, the appellant contends that he was appointed as a Fire Fighter in Deptford Township, and he passed a rigorous background check for that position, and he disclosed his background information to the appointing authority for review.

Despite being provided with the opportunity, the appointing authority did not provide a response.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)(4), provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. *See Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relate to the position of Police Officer. 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, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment 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. Moreover, 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 person 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 arrest and conditional discharge subject to completing a diversionary program could still properly be considered in removing her name from the subject eligible list.

In this matter, it is clear that the appellant's arrests adversely relate to the employment sought. The record indicates that the appellant was convicted in 2003 Distribution of a CDS, Possession of CDS, and Failure to give CDS to Law Enforcement. Additionally, the record reflects that the appellant was also charged in 2010 with Disorderly Conduct and Public Urination, and on June 12, 2012, the appellant was charged with possessing Drug Paraphernalia to contain and introduce in the human body a CDS or controlled substance analog in violation of *N.J.S.A.* 2C:36-2. The appellant was an adult at the time the incidents occurred and he has provided no reasonable explanation for his involvement in the incidents. Additionally, the appellant was not involved in just one isolated incident, as he was charged on multiple occasions. Moreover, the last incident occurred less than seven years prior to the date his name was certified on the list. As such, given the multiple incidents, not enough time has elapsed to demonstrate the appellant's suitability for the position. Although the charges against him were resolved and expunged, the appointing authority properly considered such information with respect to the appellant's background report pursuant to the above listed rules. As noted above, the appellant's arrest and participation in a diversionary program could still be considered in removing his name from the subject eligible list. With respect to rehabilitation, the foundation for an expungement is the equivalent of evidence of rehabilitation. See *N.J.S.A.* 2C:52-3 and *N.J.S.A.* 2C:52-8; See also, *In the Matter of J.B., supra.* However, given that the appellant provides little explanation for the circumstances surrounding his arrest, the expungement of the

arrests cannot outweigh those factors. Finally, while it is commendable that the appellant is now employed as a Firefighter, individuals seeking Police Officer positions are subject to an even higher standard of conduct.

Individuals in the Police Officer title must work closely with individuals who have criminal records and present an appropriate example. Further, the Commission is mindful of the high standards that are placed upon law enforcement personnel. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must help keep order and holds a highly visible and sensitive position within the community. 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 Police Officers present a personal background that exhibits respect for the law and rules. Clearly, the appellant's criminal record is inimical to that goal.

Accordingly, based on the totality of the record, the appointing authority has submitted sufficient evidence to support the removal of the appellant's name from the eligible list for Police Officer (S9999U), Deptford Township.

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 20th DAY OF FEBRUARY, 2019



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

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