



STATE OF NEW JERSEY

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

In the Matter of Amanda Colbert,
Correctional Police Officer (S9988U),
Department of Corrections

List Removal Appeal

CSC Docket No. 2019-2725

ISSUED: FEBRUARY 28, 2020 (ABR)

Amanda Colbert appeals her removal from the Correctional Police Officer (S9988U), Department of Corrections (DOC) eligible list on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, applied for and passed the examination for Correctional Police Officer (S9988U), which had a closing date of August 31, 2016. The subject eligible list promulgated on March 20, 2017 and expired on June 18, 2019. The appellant’s name was certified from the subject eligible list. The appointing authority removed the appellant’s name from the subject eligible list on the basis of an unsatisfactory criminal record. Specifically, the appointing authority indicated that the appellant, at age 22, was charged with aggravated assault on law enforcement in violation of *N.J.S.A. 2C:12-1b*, a third degree crime; terroristic threats in violation of *N.J.S.A. 2C:29-2A*, a third degree crime; and resisting arrest/eluding officer in violation of *N.J.S.A. 2C:29-2A*, a third degree crime. It noted that the charges were diverted through the Pre-Trial Intervention Program (PTI) and ultimately dismissed on February 26, 2014. The appointing authority stated that the charges were based upon an April 2012 incident where the appellant allegedly told another woman that she would “f*** her up when [she got] out of school,” and pushed and slapped a police officer in an effort to avoid being handcuffed and arrested.

On appeal to the Civil Service Commission (Commission), the appellant argues that she should be restored to the eligible list based upon the circumstances surrounding the incident, the fact that the incident at issue was her only negative

interaction with law enforcement and the progress she has made since that time. The appellant states that she was a victim of domestic violence during the period surrounding her arrest and she expresses regret for her actions during the incident at issue in the instant matter. She submits that she completed more than 300 hours of community service and an anger management course as part of her PTI. She maintains that this anger management course showed her how to appropriately manage her emotions and adds that she continues to volunteer in her community, serving with a youth recreational program. She further states that she is presently seeking an expungement of her record. She also submits that she is a single mother and currently working to further her education. She contends that her experiences, including her past mistakes, make her a good fit for law enforcement and would allow her to be an effective role model. In this regard, she compares herself to Judge Greg Mathis, whom she notes had been a gang member in his youth before earning his law license and serving as a judge. In support, the appellant submits a copy of the indictment from the underlying criminal proceedings; a PTI Order of Dismissal dated February 26, 2014; a copy of her Petition for Expungement; an Order of Dismissal for a Temporary Restraining Order (TRO) in which she was the plaintiff,¹ dated October 7, 2013; a letter from an outpatient clinician which states that she completed an anger management program in October 2013; December 7, 2012 Certificates of Completion for medical billing and coding specialist, and medical administrative assistant courses; and proof that she was certified as a billing and coding specialist.

In response, the appointing authority argues the appellant was properly removed with the subject eligible list. In this regard, it submits that under its criteria for removal, a candidate may be removed from an eligible list if they entered into PTI within 7 years of the promulgation date. Accordingly, it maintains that its decision to remove the appellant's name from the subject eligible list based upon her entry into PTI for a 2012 incident was appropriate. In support, it submits copies of New Jersey Automated Case System (ACS) records related to the criminal proceedings at issue.

The Commission notes that a review of the appellant's pre-employment application indicates that, aside from a gap in employment for an unspecified portion of 2011, she has been regularly employed since 2009.

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:

¹ The record does not indicate that the defendant named in this TRO was involved in the April 2012 incident.

- 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.

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 or her name from an eligible list was in error.

Participation in the PTI 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). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. The Appellate Division has observed that while the PTI Program provides a channel to resolve a criminal charge without the risk of conviction, it has **not** been construed to be a favorable disposition. *See In the Matter of Clifton Gauthier, Rockaway Township*, ___ *N.J. Super.* ___ (App. Div. 2019); *See also Grill, supra*. 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 the PTI 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 PTI).

In the instant matter, although the appointing authority has cited its internal criteria as a basis for removing the appellant's name from the subject eligible list, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). Although the charges against the appellant were dismissed after she completed PTI, they may 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 they adversely relate to the employment sought. The record shows that the charges involved were serious, as the appellant was charged with making terroristic threats, aggravated

assault on law enforcement and resisting arrest/eluding officer based upon allegations that she threatened another woman and then attempted to resist a police officer's effort to make an arrest. Although the appellant has provided some evidence of rehabilitation,² the incident and her completion of PTI were close in proximity to the closing date of the subject examination. Specifically, the underlying incident occurred less than four years prior to the closing date and the charges against her were dismissed less than two and one-half years prior to the closing date. Therefore, the totality of the record provided sufficient grounds to remove the appellant's name from the Correctional Police Officer (S9988U), DOC eligible list. The Commission notes, however, that with the passage of time, and absent any further adverse incidents, the appellant's background as presented in this matter may be insufficient to remove her 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 26TH DAY OF FEBRUARY, 2020



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² The record evidences that the appellant completed medical billing and coding specialist and medical administrative assistant courses in 2012; and that she has been regularly employed since 2009. The appellant has also detailed her community service since completing PTI.

c: Amanda Colbert
Lisa Gaffney
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