

a joy riding incident when he was 16 years old and was just the passenger in the vehicle. Finally, the appellant submits several letters attesting to his good character.

In response, the appointing authority reiterates the appellant's criminal history, which also includes a 2011 charge for assault on a female, and argues that he is not a suitable candidate for a Correctional Police Officer position. It adds that the decision to remove the appellant was based upon the totality of the information and other considerations on the basis of its overall assessment of the appellant and the documents submitted. Further, the appointing authority asserts that it has skilled staff of custody officers who conduct the pre-employment background check, initial intake process, home interviews and assess a candidate's suitability based on their professional experience, observations and its removal criteria.

It is noted that, although the appointing authority did not indicate the 2011 charge in its notice of removal, the appellant stated that the charge was disposed of as not guilty/dismissed and was expunged. In that regard, the appellant presented a "Petition and Order of Expunction" from the State of North Carolina for the charge dated July 14, 2017.

CONCLUSION

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the 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). Rather, *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 employment 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.

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, judiciary titles and other titles as determined by the Chairperson of the Commission. 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).

Additionally, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement." See *N.J.S.A.* 2C:52-3 and *N.J.S.A.* 2C:52-8.

Moreover, *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.

A thorough review of the record indicates that the appellant's removal from the Correctional Police Officer (S9988V), Department of Corrections, eligible list is not warranted. The arrest in question occurred in 2006, over 10 years prior to the subject list's promulgation. Additionally, the appellant was a juvenile. The appellant explains the circumstances of this indiscretion and, while the record refers to a subsequent charge of assault in 2011,¹ that charge was dismissed and later expunged. The appellant has also served in the military and submits letters attesting to his good character. Therefore, he has presented evidence of rehabilitation. The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. However, taking into consideration the totality of the evidence in the record, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record.

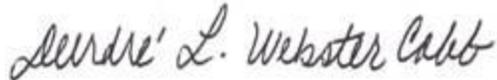
¹ It is noted that the charge occurred six years prior to the promulgation of the subject list. Further, other than listing the incident as a fact the appellant included in his appeal letter, the appointing authority does not appear to be relying on this incident in making its argument.

ORDER

Therefore, it is ordered that the appellant's appeal of the removal of his name from the list for Correctional Police Officer (S9988V), Department of Corrections be granted, and the list be revived and that absent any disqualification issue ascertained through an updated background check, the appointment of the appellant, a veteran, is otherwise mandated. Upon the successful completion of his working test period, the Commission orders that the appellant be granted a retroactive date of appointment to November 15, 2018, the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay, except the relief enumerated above.

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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