



**STATE OF NEW JERSEY**

In the Matters of Michael A. Perez,  
Correctional Police Officer (S9988A),  
Department of Corrections

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

CSC Docket Nos. 2020-1229

List Removal Appeal

**ISSUED:            MAY 22, 2020 (JET)**

Michael A. Perez, represented by Leonard C. Schiro, Esq., appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list on the basis of an unsatisfactory criminal background and an unsatisfactory driving record.

The appellant took the open competitive examinations for Correctional Police Officer (S9988A), Department of Corrections, achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on July 4, 2019. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible lists on the basis of an unsatisfactory criminal background and an unsatisfactory driving record. Specifically, the appointing authority asserted that in 2009 the appellant was charged with Witness Tampering in violation of *N.J.S.A. 2C:28-5A(1)(3<sup>rd</sup> degree)* (dismissed), for which he completed a pre-trial intervention program. The appointing authority also asserted that the appellant's driving record shows that he was involved in two reckless driving infractions, two unlicensed driver infractions, and failure to appear in court on at least two occasions.

It is noted that the appellant's certified driver's abstract reflects multiple infractions, including Unlicensed Driver on February 21, 2019 and January 27, 2018; Operating a Vehicle during Suspension Period on November 6, 2018 and on October 12, 2018; Reckless Driving on October 11, 2018, July 16, 2018, June 17, 2013; and on November 9, 2012; No License, Registration or Insurance

Identification in Possession on October 9, 2018; Non-payment of Insurance Surcharge on May 27, 2018 and on September 29, 2013; Maintenance of Lamps on November 1, 2013, November 10, 2012, and on July 9, 2012; Violation of the Parking Offenses Adjudication Act on October 1, 2013 and on March 23, 2013; Failure to Appear in Court on August 6, 2013, June 7, 2013, May 3, 2013, and on March 4, 2013; Speeding on December 21, 2012; Failure to Wear Seatbelt on October 18, 2012, January 21, 2012, August 25, 2011, August 21, 2011, January 24, 2011, and June 18, 2010; Improper Display/Fictitious Plates on September 5, 2012; Wrong Way on a One Way Street on May 11, 2012; Illegal Backing/Turning in Street on May 11, 2012; Obstructing Passage of Other Vehicles on August 21, 2011; and Using Handheld Cell While Driving on March 18, 2010. The appellant's driver's and commercial driver's licenses were suspended on four occasions from March 23, 2013 through July 17, 2013; August 6, 2013 through October 8, 2013; December 1, 2013 through December 31, 2013; and May 27, 2018 through February 27, 2019.

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that it has been over a decade since the 2009 charges occurred, and such charges were dismissed after he successfully completed a diversionary program. The appellant adds that he was only involved with one reckless driving infraction. Moreover, the appellant states that his driving infractions and 2009 charges do not have an adverse effect on his ability to perform the duties of a Correctional Police Officer.

In response, the appointing authority maintains that the appellant's criminal and driving records are sufficient to remove his name from the eligible list. The appointing authority adds that the appellant does not provide any explanations regarding his involvement in two unlicensed driving infractions, his failure to appear in court on two occasions, and his operating a vehicle when his driver's license was suspended. The appointing authority explains that such infractions, in addition to reckless driving infractions, indicate a lack of respect for the law. The appointing authority adds that its hiring criteria includes removing candidates who have been convicted of a crime of the 4<sup>th</sup> degree or higher; two or more convictions for driving while suspended or as an unlicensed driver within seven years of the certification date; failure to appear in court on two or more occasions within seven years of the certification date; and two or more convictions of reckless driving, within seven years of the certification date. Moreover, the appointing authority asserts that its goals are to select candidates who exhibit respect for the law and who uphold the day-to-day operations of the prison system.

## 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 Correction Officer Recruit. 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, supra.*

Additionally, participation in the PTI program is neither a conviction nor an acquittal. However, 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), *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *See also, N.J.S.A.* 2C:43-13(d). *N.J.S.A.* 2C:43-12(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. *In Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. 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 list.

Additionally, *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 an 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); *In the Matter of Yolanda Colson, Correction Officer Recruit (S9999A), Department of Corrections*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003). *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.

Initially, the Commission is not bound by the criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005). *See also, In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In this matter, the 2009 criminal charges are remote in time and the record reflects that the appellant has not been charged with any other criminal offenses since then. However, the appellant has not provided any substantive explanation for his involvement in the incident on appeal, and he has not provided any evidence of rehabilitation in this matter. As such, for the reasons more fully discussed below, he was properly removed from the list.

The appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible for the subject positions. A review of the appellant's driver's abstract since 2010 indicates numerous violations, including Speeding, Unlicensed Driver, Violation of the Parking Offenses Adjudication Act, Failure to Appear in Court, and Failure to Pay Insurance Surcharges. Moreover, his driver's license and commercial driver's licenses were suspended on four occasions. Such violations evidence a disregard for the motor vehicle laws and the exercise of poor judgment. The appellant has offered no substantive explanation for these multiple motor vehicle infractions. Additionally, the most recent infraction occurred on February 21, 2019, which is less than five months prior to the certification date. The recency and frequency of such serious driving infractions reflect a disregard for the motor vehicle laws and rules, which is unacceptable for a candidate applying for a Correctional Police Officer position. Correctional Police Officers hold highly visible and sensitive positions within the community and 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 Correctional Police Officers to present a personal background that exhibits respect for the law and rules.

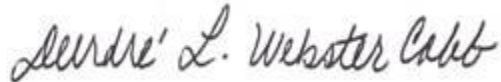
Accordingly, based on the above noted reasons, the appointing authority has presented sufficient cause to remove the appellant's name from the eligible list for Correctional Police Officer (S9988A), Department of Corrections eligible list.

### 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 20<sup>TH</sup> DAY OF MAY, 2020



Deirdre L. Webster Cobb  
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