

STATE OF NEW JERSEY

In the Matter of S.A.,
Correctional Police Officer (S9988A),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2020-2048

List Removal Appeal

ISSUED: JUNE 19, 2020 (JET)

S. A., represented by Michael Garcia, Esq., appeals the removal of her name from the Correctional Police Officer (S9988A), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination 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 list on the basis of an unsatisfactory criminal record. Specifically, the appointing authority asserted that on August 4, 2009, the appellant was charged as a juvenile with Shoplifting in violation of *N.J.S.A. 2C:20-11c(2)* (3rd degree) (dismissed), and she completed 25 hours of Community Service and was granted a one-year deferred disposition.

On appeal to the Civil Service Commission (Commission), the appellant asserts that at the time of the incident, she was only 13 years old and her older friends influenced her to engage in shoplifting while shopping at J.C. Penney. The appellant explains that she completed community service and the matter was dismissed. The appellant adds that she has learned from her mistakes and she has not been charged with any additional violations since that time. Moreover, the appellant maintains that he is still interested in the subject position.

Despite being provided with the opportunity, the appointing authority did not provide any additional information or arguments in response to the appellant’s appeal.

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 Correctional 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, supra.*

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). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, when requested for purposes of making a hiring decision. 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. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

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).

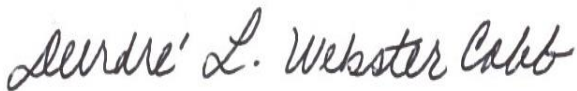
In this matter, the record reflects that the appellant was arrested as a juvenile in 2009 and charged with Shoplifting, for which she completed a diversionary program. Additionally, the record reflects that she has not been charged with any other incidents since that time. Moreover, the appellant provided explanation for her involvement in the incident and the record reflects evidence of rehabilitation as she states that she is gainfully employed and has not been charged with any further infractions since that time. Therefore, the appointing authority has not provided a sufficient basis to remove the appellant's name from the list. Accordingly, the appellant's name should be restored to the list for Correctional Police Officer (S9988A), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted.

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
17TH DAY OF JUNE, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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