



**STATE OF NEW JERSEY**

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

In the Matter of R.P., Correctional  
Police Officer (S9988U), Department  
of Corrections

List Removal Appeal

CSC Docket No. 2020-240

**ISSUED: JUNE 19, 2020 (ABR)**

R.P. appeals his removal from the Correctional Police Officer (S9988U), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, applied for and passed the open competitive examination for Correctional Police Officer (S9988U), which had a closing date of August 31, 2016. The subject eligible list promulgated on March 30, 2017 and expired on March 29, 2019.

The appellant's name was subsequently certified to the appointing authority. 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, as a juvenile, was charged with aggravated assault, in violation of *N.J.S.A. 2C:12-1B(2)*, a third-degree crime; possession of a weapon for unlawful purposes, in violation of *N.J.S.A. 2C:39-4A*, a second-degree crime; unlawful possession of a weapon, in violation of *N.J.S.A. 2C:39-5B*, a third-degree offense; and possession of a weapon for unlawful purposes, in violation of *N.J.S.A. 2C:39-4D*, a third-degree offense, based upon a November 2004 incident.

On appeal to the Civil Service Commission (Commission), the appellant argues that he should be restored to the subject eligible list. The appellant states that at age 13, after winning a pellet gun at a carnival, he took it to a park in Bloomfield Township to show off at a friend's football game. He indicates that his friend ventured

off with it briefly before returning it to him. Thereafter, a police officer approached him and asked him about the pellet gun. The officer ultimately confiscated it and told the appellant to leave the park. The appellant avers that he lacked knowledge of New Jersey's strict gun laws as a 13-year-old or the pellet gun's classification as a weapon. He states that he was subsequently adjudicated delinquent on the unlawful possession of a weapon charge with a five-month deferred disposition. He emphasizes that this event was an isolated incident and that he has not had any other negative interaction with the law since that time.

In response, the appointing authority states that it stands by its decision to remove the appellant's name from the subject eligible list. In this regard, it submits that under its internal criteria, an eligible's name may be removed from an eligible list if they have been "convicted of any offense which is a crime of the fourth degree or higher to include, but not limited to, any . . . juvenile offenses." The appointing authority submits records from the Family Automated Case Tracking System (FACTS), which indicate that the appellant received a five-month deferred disposition for the third-degree unlawful possession of a weapon and possession of a weapon charges. The aggravated assault and second-degree unlawful possession of a weapon charges were dismissed. The appointing authority also submits a copy of the appellant's pre-employment application. It is noted that the appellant stated in his pre-employment application that he earned a General Educational Diploma (GED) in February 2009, has maintained regular employment since August 2010, and attained an Emergency Medical Technician (EMT) certification.

## 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:

- 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.

Further, 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). *N.J.S.A.* 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant's juvenile arrest record was properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision.

*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.

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). Here, while the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter indicates that the appellant's removal from the subject eligible list is unwarranted. In this regard, the record reflects that the appellant was only 13 years old when the underlying incident occurred and the appellant does not appear to have had any subsequent negative interaction with law enforcement. Moreover, the underlying incident occurred more than 11 years prior to the closing date for the subject examination. The record also shows significant evidence of the appellant's rehabilitation. In this regard, it is noted that he completed a GED in February 2009, has maintained regular employment since August 2010, and attained an EMT certification. Accordingly, the foregoing demonstrates that the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient

grounds to remove the appellant's name from the Correctional Police Officer (S9988U), Department of Corrections eligible list.

**ORDER**

Therefore, it is ordered that this appeal be granted and the Correctional Police Officer (S9988U), Department of Corrections eligible list be revived in order for the appellant to be considered for appointment at the time of the next certification for prospective employment opportunities only.

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  
17<sup>TH</sup> DAY OF JUNE, 2020



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