



**STATE OF NEW JERSEY**

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

In the Matter of M.B. Correctional  
Police Officer (S988A), Department of  
Corrections

CSC Docket No. 2020-1274

List Removal Appeal

**ISSUED: AUGUST 26, 2020**

M.B. appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list.

By way of background, the appellant took the open competitive examination for the subject title, achieved a passing score and his name was certified to the appointing authority. In disposing of the certification, the appointing authority requested the removal of the appellant’s name on the basis of an unsatisfactory criminal record.. Specifically, the appointing authority indicated that the appellant entered into a conditional discharge program for underage gambling in a casino on April 11, 2019 and was issued a fine.

On appeal to the Civil Service Commission (Commission), the appellant states that he disclosed his juvenile record as required and was advised by the judge that his record was sealed and would not negatively impact him. In this regard, the appellant states he was charged with underage gambling on December 6, 2017 and he completed a conditional discharge program on April 11, 2019. The appellant notes that he has always wanted to be a Correctional Police Officer and that his mother has served as a County Correctional Police Officer for 23 years.

In response, the appointing authority states that it advises all applicants that if they enter into a conditional discharge program within seven years of the promulgation of the eligible list, upon review of the situation, it will remove them from the eligible list. In this case, the appointing authority states that the appellant

did not complete the conditional discharge program until after promulgation of the list.

## CONCLUSION

*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 removal of 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.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.

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 an 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).

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, a correctional facility, when requested for purposes of making a hiring decision. However, *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. Accordingly, the disability arising under *N.J.A.C.* 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal. However, it is noted that although it is clear that the appellant was never convicted

of a crime, he has only been arrested one time, for which he completed a Conditional Discharge.. 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).

Pursuant to *N.J.S.A. 2C:43-13.1, et seq.*, a defendant who is charged with certain petty disorderly persons offenses or disorderly persons offenses may apply for entry into the Conditional Dismissal Program. To be eligible, a defendant must not have a prior conviction for a petty disorderly persons offense, disorderly persons offense or a crime. Additionally, the defendant must not have previously participated in the Conditional Dismissal Program, Conditional Discharge Program or the Pre-Trial Intervention Program. If a defendant is admitted to the Conditional Dismissal Program, the charges against him or her are conditionally dismissed and he or she is placed under a probationary monitoring status for a period of one year. At the end of the conditional dismissal term, if the defendant fulfills the conditions of the program, the court may terminate the probationary monitoring and dismiss the proceedings against the defendant. Pursuant to *N.J.S.A. 2C:52-6*, a defendant may apply for expungement of the arrest six months the entry of the order of dismissal.

In the instant matter, the appellant's name should be restored to the subject list. Other than his one juvenile disorderly persons offense, for which he completed a Conditional Discharge Program, the appellant's record does not reveal any other negative interactions with the law. Additionally, contrary to the appointing authority's assertion that he completed the Conditional Discharge Program after the list was issued, the record reveals that the appellant completed the program on April 11, 2019, but the list issued two months later, on June 27, 2019. Given the totality of this particular situation, this one juvenile disorderly persons offense, by itself, provides an insufficient basis on which to remove the appellant's name from the list.

### **ORDER**

Therefore, it is ordered that this appeal be granted and that the appellant's name be restored to the list 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 19<sup>TH</sup> DAY OF AUGUST 2020

*Deirdre' L. Webster Cobb*

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