



STATE OF NEW JERSEY

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

In the Matter of R.W.,
Correctional Police Officer (S9988A),
Department of Corrections

CSC Docket No. 2020-883

List Removal Appeal

ISSUED: APRIL 12, 2021 (EG)

R.W., represented by Anthony M. Radice, Esq., appeals the decision of the appointing authority to remove his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The subject eligible list was promulgated on June 27, 2019 and expires on June 26, 2021. In disposing of a certification from the subject eligible list, the appointing authority sent the appellant a letter dated September 3, 2019, indicating that he was being removed based on his criminal record. Specifically, it indicated that in 2005 the appellant was charged with criminal attempt and a 3rd degree burglary-no bodily injury and/or unarmed offense. The appellant entered a six-month diversion program and was ordered to receive counseling sessions, 50 hours of community service, to remain arrest free, and was banned from the Quakerbridge Mall unless accompanied by a parent. The charges against the appellant were dismissed upon completion of the program.

On appeal, the appellant argues that his arrest occurred nearly 18 years ago when his was a minor and that it has been expunged. In support of this contention, the appellant submits documentation indicating his arrest was expunged effective October 31, 2019. Additionally, the appellant asserts that he was 16 years old at the time of the incident and the other parties involved took responsibility for committing the actual crimes.

In response, the appointing authority reiterates the appellant's criminal history and argues that he is not a suitable candidate for Correctional Police Officer. In support of its contentions the appointing authority submits a copy of the appellant's application and his criminal record. Moreover, the appointing authority states that it strives to select candidates who exhibit a good work ethic and respect for the law as this is imperative to effectively manage the day-to-day operations of a correctional system, and argues that the appellant is not a suitable candidate.

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 that includes a conviction for a crime that 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 or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. 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.

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.

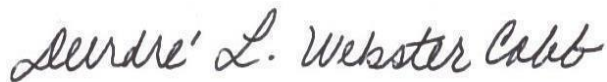
While the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter indicates that the appellant's removal from the subject eligible list is unwarranted. The appellant's arrest in 2005 occurred nearly 15 years before the promulgation of the subject list, when the appellant was a juvenile of 16 years of age. It is also noted that the charges were dismissed upon his completion of the requirements of the diversion program he was ordered to complete. Further, there is evidence of rehabilitation in the record, as the appellant was granted an expungement of the charges. The foundation for an expungement, it should be noted, is the equivalent of evidence of rehabilitation. *See In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006). Accordingly, based on the totality of the record in this matter, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the subject eligible list.

ORDER

Therefore, it is ordered that the appellant's appeal of the removal of his name from the list for Correctional Police Officer (S9988A), Department of Corrections be granted, and that the appellant's name may be certified 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 7TH DAY OF APRIL, 2021



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