

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Ameer Dupree,
County Correction Officer (S9999R),
Essex County

List Removal Appeal

CSC Docket No. 2016-1933

ISSUED: **NOV 29 2016** (LDH)

Ameer Dupree appeals the Essex County Department of Corrections' request to remove his name from the eligible list for County Correction Officer (S9999R), on the basis of falsification of his application and an unsatisfactory criminal and driving history.

The examination for County Correction Officer (S9999R) was announced with a closing date of September 4, 2013. The resultant eligible list promulgated on May 2, 2014 and expires on May 1, 2016. A certification containing 252 names was issued to the appointing authority on February 20, 2015. In disposing of the subject certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal and driving history. In this regard, the appointing authority maintains that the appellant was arrested in October 2009 for possession of less than 50 grams of marijuana and entered into a one-year Conditional Discharge program; and was arrested in April 2012 for simple assault, but the charges were dismissed. His record also evidenced that he received summonses for: hindering apprehension/providing false information in December 2007, but charges were dismissed; obstructing the administration of law/governmental functions in October 2008, paid a fine; and possession of alcoholic beverages in public in June 2009, paid a fine. The appointing authority stated that the appellant failed to disclose the 2007 hindering apprehension/providing false information and the 2009 possession of alcoholic beverages in public charges on his application. Additionally, it noted that an inquiry into the New Jersey Domestic Violence Central Registry revealed that a temporary restraining order (TRO) was issued against the appellant on August 22, 2012 and was dismissed on August 29, 2012. According to the narrative in the police report, the appellant grabbed a female by the neck, slapped her face and threw her to the ground causing minor bruising and scratches to her face, neck and elbow. The appointing authority also

maintained that the appellant's driving record evidenced a large number of tickets. Specifically, it noted that an inquiry for the appellant's name in the New Jersey Automated Traffic System produced 35 tickets, 24 of which were moving violations and nine of the moving violations became failure to appear, with the latest violation occurring in 2008. Lastly, the appointing authority indicated that the appellant omitted two summonses and 20 moving violation tickets from his application. As a result of the appellant's unsatisfactory criminal record and his omission of numerous violations, the appointing authority removed the appellant from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant argues that his criminal history is not a disqualifying reason to justify his removal from the eligible list. He disagrees with the number of motor vehicle violations the appointing authority alleges he committed. He maintains that he used his five year driving abstract to complete his application in order to eliminate any guess work. The appellant argues that the TRO that was filed against him was the result of false allegations, which he claims was the reason why it was dismissed. He argues that two of the charges listed were the result of mistaken identity. In support, he submits, *inter alia*, a full driving record abstract, a Township of Union Municipal court order, and a conditional discharge letter.

Despite an opportunity to do so, the appointing authority did not submit any further arguments.

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, supra.* 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 of a pardon or an expungement shall prohibit removal from a list, 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. *See N.J.A.C. 4A:4-4.7(a)4ii; see also, N.J.S.A. 2C:52-27(c).*

Moreover, pursuant to *N.J.S.A. 2C:36A-1*, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. *See State v. Marzolf, 79 N.J. 167 (1979)* (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's Conditional Discharge may be considered in removing his name from the subject eligible list as it is recorded in his personal history.

Additionally, *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the Commission to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *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 this matter, a thorough review of the record indicates the appellant's removal from the subject eligible list is warranted. Clearly, the appellant's criminal history adversely relates to the subject title. The appellant has incurred five charges within a five year time period. In this regard, he incurred a 2009 conditional discharge for *N.J.S.A 2C: 35-10A(4)* Possession less than 50g; a 2012 dismissed *N.J.S.A 2C: 12-1A (1)* Simple Assault; a 2007 dismissed *N.J.S.A 2C: 29-3B (4)* Hinder Apprehension-False Information; a 2008 guilty for *N.J.S.A 2C: 29-1A* Obstructing Administration of Law/Governmental Function; and a 2009 guilty for Alcoholic Beverages in Public. More importantly, the nature and circumstances surrounding the simple assault and resulting TRO gives the Commission great pause. According to the narrative in the police report, the appellant grabbed a female by the neck, slapped her face and threw her to the ground causing minor bruising and scratches to her face, neck and elbow. This incident occurred approximately one year prior to the closing date of the subject announcement. Although the appellant claims that the TRO was the result of "false accusations," he has provided no evidence in support. Additionally, the appellant's argument of

mistaken identity is unpersuasive, the name he gave in his hinder apprehension charge is the person the appellant states is the real "culprit." Moreover, the appellant's numerous arrests reflect unfavorably on his character and his ability to perform the duties of the subject position. The Commission is ever mindful that a Correction Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction Officer; like municipal 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 appellant's offenses are unacceptable for an individual seeking a position as a County Correction Officer. Accordingly, under these circumstances, the appointing authority has demonstrated sufficient reasons to remove his name from the eligible list for County Correction Officer (S9999R), Essex County.

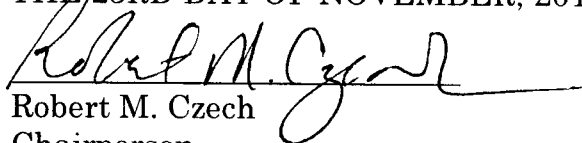
Since the appellant's name has been removed on the basis of his criminal history, it is unnecessary to address the appointing authority's request to also remove his name from the subject eligible list on the basis of his driving record or falsification of his application.

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 23RD DAY OF NOVEMBER, 2016



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