



STATE OF NEW JERSEY

In the Matter of Joseph Fayad,
Correction Officer Recruit (S9988T),
Department of Corrections

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-3393

List Removal Appeal

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

Joseph Fayad, represented by Ciro Spina, Esq., appeals the Department of Corrections' decision to remove his name from the Correction Officer Recruit (S9988T), Department of Corrections, eligible list on the basis of an unsatisfactory criminal record and falsification of application.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T), achieved a passing score, and was ranked on the subsequent eligible list. 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 and falsification of application. Specifically, the appellant was charged with lewdness in October 2010 and thereafter found guilty. Additionally, the appellant failed to disclose a disturbing the peace charge in September 1999 which was disposed after anger counseling, a criminal trespass charge in January 2000¹ where the appellant entered into a diversionary program that included home detention and the charge was later dismissed in April 2002, an aggravated assault on a teacher and resisting arrest charges in June 2000 where he plead guilty and was dismissed after completion of 3 months differed disposition, and an unlawful possession of a weapon charge in February 2006 which was later downgraded to improper behavior and then dismissed. Additionally, the residence

¹ This charge was not cited by the appointing authority in its Notification of Removal which it sent to the appellant to explain why he was being removed. The appointing authority brought up this charge on appeal and the appellant did not respond to it.

information on his application did not match with his Candidate Chronological Data Sheet.

On appeal, while the appellant acknowledges that he erroneously believed he did not need to disclose juvenile charges against him since they were dismissed and therefore he thought they were not relevant, he argues that since the charges occurred when he was approximately 15 years old and over 14 years ago, he did not falsify his application because these omissions were not material to the position sought. He asserts that he did not fail to disclose the 2006 unlawful possession of a weapon charge as that charge was downgraded to improper behavior and he disclosed the improper behavior charge on page 18 of his application. He does acknowledge that he lists the incorrect date for this charge. He disagrees with the appointing authority's contention that his 2010 lewdness charge is automatically grounds for removal. He highlights that this charge was expunged. He states that he received the lewdness charge when he was found in a car with his girlfriend in a vehicle, undressed and under a blanket. He contends that this incident does not materially affect his ability to serve as a Correction Officer. He maintains that he has been rehabilitated as he has not been charged with a crime since 2010. He presents that he has been employed as a Security Guard for the same employer for the past 5 years and has had other security and loss prevention positions. He indicates that he has never been disciplined by his employers, is financially stable, and is in the process of owning his own home.

In response, the appointing authority highlights that the appellant was specifically asked on his application if he had ever had police contact as a juvenile and he responded, "No." It also states that the appellant did not disclose his adult charge for unlawful possession of a weapon. It reiterates that he needed to disclose this information regardless of the outcome so that it could have all the information to make an informed decision regarding his candidacy. Further, it presents that its criteria for removal on his application stated that any conviction for lewdness is grounds for removal. Moreover, it represents that the appellant's information regarding his residences on his Candidate Chronological Data Sheet that he filled out during pre-employment processing did not match the information that he provided on his employment application.

CONCLUSION

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 removal of 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. Moreover, *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. Further, *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.

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 employment 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.

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). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a law enforcement agency, 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.

Additionally, participation in the PTI Program is neither a conviction nor an acquittal. See *N.J.S.A.* 2C:43-13(d). See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, 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. Thus, the appellant's arrest and entry into the juvenile diversion program which is similar to the PTI program could still be properly considered in removing his name from the subject eligible list. Compare *In the Matter of Harold Cohrs* (MSB, decided

May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

In the instant matter, the appointing authority has presented a valid basis to remove the appellant's name from the subject list. The appellant's explanation that he did not think he needed to disclose his 4 juvenile charges (disturbing peace, criminal trespass, aggravated assault to a teacher, and resisting arrest by using threats and force) on his application because he thought they were not relevant since they were dismissed is not sufficient as question 52 on the employment application asks have you ever been **charged** with juvenile delinquency. Additionally, the appellant's explanation that he did disclose his unlawful of a weapons charge by only providing the downgraded charge of improper behavior is also not sufficient as question 46 on his application states that you must disclose all charges and everything must be disclosed. Further, while the appellant argues that his omissions are not material, when you consider that he had 4 juvenile charges and 2 adult charges, the appellant arguably has a background that is not sufficient for a position as a Correction Officer. In this regard, it is recognized that a Correction Officer Recruit is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction Officers, 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 public expects Correction Officers to present a personal background that exhibits respect for the law and rules. At minimum, the appellant's complete record was material and needed to be fully disclosed to the appointing authority so that it could perform a complete background investigation and make a fully informed decision about his candidacy.

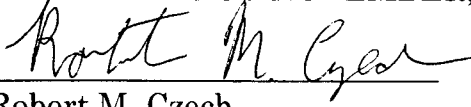
Accordingly, the appellant has not met his burden of proof in this matter as the totality of his multiple omissions on his application combined with his numerous negative interactions with the law as both a juvenile and as an adult provide the appointing authority with sufficient cause to remove his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections.

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



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Joseph Fayad
Ciro Spina, Esq.
Elizabeth Whitlock
Veronica Tingle
Records Center



State of New Jersey
DEPARTMENT OF CORRECTIONS
CUSTODY RECRUITMENT UNIT
PO Box 863
TRENTON NJ 08625-0863

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

GARY M. LANIGAN
Commissioner

March 2, 2016

JOSEPH FAYAD
[REDACTED]

RE: NOTIFICATION OF REMOVAL
Symbol: S9988T; Rank: 0365

Dear Candidate:

This is to inform you that your name has been removed from the above referenced open-competitive list for State Correction Officer Recruit due to:

(X) Security and Background Check: Unsatisfactory Criminal Record: You were charged with 2C:14-4 for lewdness on 10/29/10 and found guilty on 1/14/11. Falsification of Application: You failed to disclose being charged with 2C:33-2 for disturbing peace on 9/1/99. The charge was adjudicated as delinquent and referred to the juvenile referee on 2/24/00. The consequence of the charge was postponed disposition 6 months, and anger counselling. You failed to disclose being charged with 2C: 12-1B for aggravated assault on a teacher and 2C:29-2A for resisting arrest on 6/12/00. You plead guilty and after completion of 3 months differed disposition the charge was dismissed on 4/30/02. You failed to disclose being charged with 2C:39-5 for unlawful possession of a weapon on 2/04/06. The charge was disposed on 9/19/06. The date of employment and residence you provided on the application do not match with Candidate Chronological Data Sheet.

NJAC 4A:4-4.7 provides for the removal of a prospective employee for the reason noted. Therefore, your name has been removed from the S9988T eligible list.

You may, within 20 days from the date of this notice, appeal this action by writing to the Civil Service Commission at the return address provided below indicating why this action is not warranted. Your appeal must include the certification number, your social security number, and all proofs, arguments, and issues you plan to use to substantiate the issue(s) raised in your appeal.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20.00 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJCSC. Persons receiving public assistance pursuant to P.L. 1947, c.156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.) or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Failure to submit the required \$20 fee or evidence of one of the exemptions will result in your appeal not being processed.

Page 2

Your appeal must be filed with:

Civil Service Commission
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

YOU MUST INCLUDE A COPY OF THIS NOTICE WITH YOUR APPEAL and send a copy of your appeal documentation to the Custody Recruitment Unit for our records.

Sincerely,

Custody Recruitment Unit

HN
C:file

