



STATE OF NEW JERSEY

In the Matter of Jose Gonzalez, Jr.,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-230⁸

List Removal Appeal

ISSUED: **NOV 30 2016** (JET)

Jose Gonzalez, Jr., represented by Ronald W. Spevak, Esq., appeals the removal of his name from the Correction Officer Recruit (S9988R), Department of Corrections, eligible list.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on May 23, 2013. 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 background report. Specifically, the appointing authority asserted that the appellant was removed from a separate police officer list in 2011 due to an unsatisfactory background report. Specifically, the appointing authority asserted that on October 3, 2009, the appellant was charged in Carteret with Improper Behavior in violation of *N.J.S.A. 2C:33-2A(1)* (dismissed) as a result of a domestic violence incident. The appellant pled guilty to loitering in violation of Carteret borough ordinance 168-2. Additionally, the appointing authority indicated that the appellant is affiliated with gangs since he has tattoos of jester faces and rosary beads that are common tattoos associated with the Latin Kings.

On appeal, the appellant asserts that he was not charged for an incident of domestic violence, but rather, was charged with the petty disorderly persons offense of Improper Behavior. The appellant adds that he pled guilty to the amended charge of Loitering which is a violation of a local ordinance. Further, the appellant contends that he has no gang affiliation and his tattoos do not indicate membership

in the Latin Kings. In support, the appellant provides an undated letter from Kenneth J. Puccio, a former Police Detective (retired),¹ who confirms, among other things, that the appellant's tattoos are not consistent with gang affiliation in the Latin Kings.

In response, the appointing authority maintains that the appellant's name should be removed from the list. In support, the appointing authority provides a background report prepared by Christopher House, a Correction Lieutenant. Specifically, House asserts that the information listed in the appellant's employment application is inconsistent with the police narrative and a statement he submitted to the appointing authority during pre-employment processing.² Further, House avers that the appellant provided false statements of material facts in response to questions on the employment application. In this regard, the appellant indicated in response to question 52 on the employment application that he was never subpoenaed in court for a criminal matter, and the dates provided for his employment at Pep Boys are incorrect. House adds that the appellant indicated on page 18 of the employment application that he was involved in an incident of domestic violence. He also indicated in response to question 46 on the employment application that he was involved in a physical fight with two family members. Moreover, House contends that the appellant's tattoos are consistent with Latin Kings gang affiliation. As such, there was sufficient reason to remove the appellant's name from the list.

In response, the appellant asserts that, although he struck his uncle during a physical altercation, it was a minor incident that was downgraded to a loitering charge. The appellant adds that the incident was a family related dispute that occurred seven years ago, and the police narrative is simply "boiler plate" language pertaining to an assault charge. Additionally, the appellant contends that he did not falsify the employment application and was completely candid regarding the 2009 arrest. Moreover, the appellant maintains that Lieutenant House does not have sufficient experience to comment about how the tattoos are affiliated with the Latin Kings gang. As such, the appellant states that his name should be restored to the list.

It is noted that the appointing authority does not provide any pictures of the appellant's tattoos for review. However, it provides documentation from the Gang

¹ Puccio notes that he has several years of experience with identifying individuals affiliated with the Latin Kings gang.

² House notes that the police narrative indicates "In fighting specifically arguing and yelling with Jorge Borrero and then striking him in the face with a closed fist in a public area." He also notes that, in the written statement, the appellant indicated that "there was alcohol at the party and my uncle had too much to drink and assaulted my sister. Once I seen him striking my sister I went to her defense therefore getting into a fight with him. Another uncle of mine that did not get along with me saw the fight and decided to try and assault me, in self-defense I avoided his strike then countered and struck him."

Management Unit, Juvenile Justice Commission, which depicts several tattoos showing gang affiliation with the Latin Kings.

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, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). 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 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 a Police Officer employment 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, supra*. In *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal to the former Merit System Board (Board) 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 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)6, allows the Commission to remove an individual from an eligible 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:4-4.7(a)1, in conjunction with

N.J.A.C. 4A:4-6.1(a)9, allows for the removal 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 an appointment.

Initially, the appointing authority argues that the appellant made a false statement of material fact in response to various questions on the employment application. The Commission disagrees. In response to question 46 on the employment application, "Have you ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction," the appellant checked "Yes." He also listed that "[t]here was an incident [where] an uncle of mine assaulted me therefore resulting in a fight between us. Both of us were taken into custody and released that same night. We both went to court [and] wished to have all charges dropped, and the ending result was an amended charge of loitering[.]" Although the appointing authority argues that his response to question 46 was not consistent with the police narrative or the statement he provided during pre-employment processing, a review of such documentation actually supports the appellant's version of events. Contrary to the appointing authority's claim, the information listed in response to question 46 appears to be consistent with the circumstances surrounding the October 3, 2009 arrest. Although the appellant may have listed additional information pertaining to the circumstances of the incident, it does not invalidate the answer he provided on the application. As such, the appointing authority has not established that the appellant's response to question 46 constitutes a false statement of material fact.

Additionally, in response to the question on page 18 of the employment application, "disclose all charges, whether dismissed or pending, including expungements, conditional discharges, pre-trial interventions, or any other dismissal as a result of successful completion of a diversionary program, any DUI/DWI convictions, juvenile matters, and all incidences of domestic violence to which you were a party," the appellant indicated "Domestic Violence" under the nature of the charges section. However, page 18 of the application also reflects the date of the incident (October 3, 2009), the address of the incident (Carteret), and the disposition of the charges (Loitering). Although the appellant should have listed that he was charged with Improper Behavior, the fact that he erroneously listed the charge of Domestic Violence does not necessarily show that he attempted to mislead the appointing authority. Since the Commission finds that the appellant truthfully answered the other information listed on page 18 of the application, the appointing authority has not established its contention that the appellant provided a false statement of material fact for erroneously listing the wrong charge. As such, the contention that the appellant falsified the response on page 18 on the application has not been established.

With respect to the appointing authority's argument that the appellant improperly answered question 52 on the application, "have you ever been summoned, subpoenaed or required to testify before any municipal, state, or federal agency or any other investigational body for a criminal matter," the appellant argues that he misunderstood the question and did not intend to mislead the appointing authority when he answered "No" to the question. As noted above, the appellant truthfully answered the other questions on the employment application. Since he properly answered the other questions, it does not follow that he improperly answered question 52 with intent to mislead the appointing authority. Further, the record does not reflect any substantive evidence to show that the appellant purposely answered question 52 with intent to deceive the appointing authority. As such the Commission is satisfied that the appellant has established a presumption that he misinterpreted the question. As such, the response to question 52 does not constitute a false statement of material fact. Additionally, the appointing authority also argues that the appellant falsified the dates he was employed at Pep Boys. However, it did not provide any substantive information, such as an employment contact form, to show that he incorrectly listed the employment dates. Moreover, the appointing authority did not establish that it was unable to conduct a background investigation based on the information that was provided. Accordingly, the appointing authority has failed to establish that the responses on the employment application constitute a false statement of material fact.

However, the arrests underlying the charges may still be considered. The appellant was arrested and charged with Improper Behavior (dismissed) and he pled guilty to Loitering. Although the appellant asserts that these incidents were minor and provides some explanation for his involvement in the incident, he was an adult at the time of the incident in October 2009. Although it appears to be an isolated incident, since the arrest occurred less than 10 years before he applied for the subject position, not enough time has elapsed to show that he has been rehabilitated. Additionally, the nature of the arrest clearly adversely relates to the title of Correction Officer Recruit. In this regard, it is recognized that 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). Accordingly, the appellant's record constitutes sufficient cause to remove his name from the eligible list for Correction Officer Recruit (S9988R).

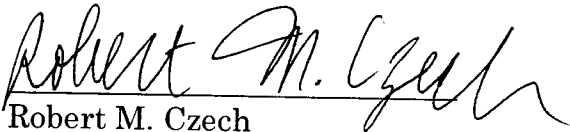
With respect to the argument that the appellant's tattoos evidence gang-related activities, it is unnecessary to address that argument since the appellant was removed for the above noted reasons. Accordingly, the appellant has failed to meet his burden of proof in this matter.

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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