



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Joel Puntiel, Police
Officer (S9999R), Perth Amboy

CSC Docket No. 2016-2475

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List Removal Appeal

ISSUED: NOV 30 2016
(CSM)

Joel Puntiel, represented by Michael Prigoff, Esq., appeals the removal of his name from the eligible list for Police Officer (S9999R), Perth Amboy on the basis of an unsatisfactory background report.

The appellant's name appeared as a disabled veteran eligible on the subject list that expires on May 1, 2017. On June 10, 2014, the appellant's name was certified (OL140783) in the 2nd position. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory background report. Specifically, the appointing authority's background investigation found that his driver's license was suspended between September 2003 and August 2005 for non-payment of insurance, that he received three moving violations between 2003 and 2012, and he received one parking violation in 2011. Additionally, it found that the appellant was arrested and charged with possession of marijuana in 1999 and 2000 that were expunged in 2006. Further, the investigation found that the appellant was subject to the Uniform Code of Military Justice on February 2, 2003 and April 6, 2003 for being absent without leave (AWOL), for which he received 45 days of extra duty and 45 days restriction. The appellant appealed the matter of the removal of his name from the list to the Division of Agency Services (Agency Services), which sustained the request to remove his name from the list.

On appeal to the Civil Service Commission (Commission), the appellant states that he is a decorated veteran and the appointing authority unfairly focused on events that happened in his distant past. In this regard, he asserts that he was

disciplined for minor infractions while he was in the military, received motor vehicle violations for driving with a suspended license, and had two 15-year old arrests that were dismissed. The appellant explains the situations when he was AWOL in the army as “miscommunications between himself and the military chain of command” but emphasizes that he was twice promoted while in the service. Significantly, he explains the second time he was AWOL was as a result of being “accosted by Mexican police” who threatened to tow his car if he was not able to immediately pay the fine in cash. The appellant describes this incident as a “shakedown,” and, since he could not pay the fine, the car was towed and not released until funds could be obtained. The appellant asserts that he contacted his military superiors to advise them of this situation, and states that while his absence was not entirely his fault, he was still disciplined. Regarding his arrests for possession of marijuana, the appellant states that these incidents occurred more than fifteen years ago and that he has since made adjustments to his lifestyle that allow him to avoid being caught in similar situations. With respect to his driving record, the appellant states that he received a ticket for driving without a license in 2005, driving an unregistered vehicle in 2010 and 2012, and a parking ticket in 2012. The appellant provides a certification with his appeal in support of these contentions.

In response, the appointing authority states that its determination to remove the appellant from the list was not arbitrary and/or capricious, but rather based on his unsatisfactory background report. In support of its position, the appointing authority provides copies of its background investigation report.

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. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

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 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).

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 municipal police department, 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 been arrested on two occasions for possession of marijuana and, by his own admission, had an adverse encounter with Mexican law enforcement authorities. 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).

In the matter at hand, the record evidences that the appellant has been arrested or has had adverse contacts with law enforcement as a juvenile or an adult from 1999 to 2000 for possession of marijuana and, by his own admission on appeal, an adverse encounter with the Mexican police in 2003. Although the appellant attempts to minimize the discipline he received while serving in the army and characterizes his encounter with Mexican police as a "shakedown", it cannot be ignored that 45 days of extra duty and 45 days restriction to base were imposed on

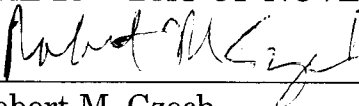
him as a result of his being AWOL. Further, his license was suspended almost two years for non-payment of an insurance surcharge between September 2003 and August 2005. While the appellant indicates in his certification that he “promptly” corrected this matter when he learned of the suspension when he returned to New Jersey in 2005, it cannot be ignored that this correction occurred four days after he received a ticket for being an unlicensed driver. Additionally, he was cited twice, in 2010 and 2012, for operating an unregistered vehicle. While the appellant argues that these are essentially minor violations that have nothing to do with the position sought, in conjunction with his prior adverse encounters with law enforcement and disciplinary action in the army as a result of being AWOL, such conduct reveals a disregard for rules and laws and is indicative of the appellant’s exercise of poor judgment, which is not conducive to the performance of duties of a Police Officer. The Commission notes that Police Officers are law enforcement employees who 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). The public expects Police Officers to present a personal background that exhibits respect for the law and the rules. Accordingly, given the totality of the circumstances, the appointing authority has presented sufficient cause to remove the appellant’s name from the subject eligible list.

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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