



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Jamar Smith, Police Officer (S9999R), Newark and Correction Officer Recruit (S9988T), Department of Corrections

CSC Docket Nos. 2016-2945 and 2016-3086

List Removal Appeals

ISSUED: NOV 30 2016 (CSM)

Jamar Smith appeals the removal of his name from the eligible list for Police Officer (S9999R), Newark, on the basis of an unsatisfactory background report. Mr. Smith also appeal the removal of his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections, on the basis of an unsatisfactory background report. These appeals have been consolidated due to common issues presented.

Police Officer

The appellant took the open competitive examination for Police Officer (S9999R), 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, asserting that he had an unsatisfactory background report. Specifically, the appointing authority provided the appellant's driver's abstract demonstrating that his license was suspended on six different occasions between March 2008 and June 2014 and had multiple moving violations. Additionally, the appointing authority found that the appellant was arrested on April 26, 2002 for resisting arrest and possession of three bags of cocaine and 14 bags of marijuana. The appellant was found guilty of resisting arrest and the other charges were dismissed. The appellant was also arrested on February 14, 2003 for resisting arrest, possession of five bags of cocaine, and distributing CDS on school property, but those charges were dismissed for lack of prosecution. Further, the appellant falsified his application when he answered "yes" to question #38 on the employment application asking if he had ever been fingerprinted, stating it was for employment purposes. However, the appellant failed to indicate that he was fingerprinted and

photographed when he was arrested on April 26, 2002, February 14, 2003, and June 23, 2014. Moreover, the appellant answered “no” to question #50, which asked if he had ever received a summons for a violation of the motor vehicle laws in this or any other state, but the New Jersey Automatic Traffic System confirmed that he received multiple tickets for failure to observe traffic signals, speeding, failure to wear seat belts and safety glass requirement between 2005 and 2014.

### **Correction Officer Recruit**

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, asserting that he had an unsatisfactory background report. Specifically, the appointing authority found that the appellant was charged with criminal trespass on April 6, 1999 and resisting arrest, possession of a CDS, and manufacturing and distributing CDS on school property. The appointing authority also found that the appellant was terminated from Universal Institute in 2015 and Pitney Bowes in 2014. Further, the appointing authority found that the appellant falsified his application because he did not disclose the criminal charges that were brought against him and that his Chronological Data Sheet for education and employment did not match with his application.

### **Consolidated Appeals**

In his appeals, the appellant states that he honestly filled out his application to the best of his knowledge with information provided to him by the Newark Municipal Court. The appellant provides copies of the dispositions of the February 13, 2003 incident noting that the charges were dismissed and a letter from the Newark Municipal Court dated February 17, 2016 indicating that it did not find any information regarding the April 6, 1999 and the April 26, 2002 incidents. The appellant believes that since no records could be found regarding these incidents, it is a mistake of identity. Additionally, the appellant states that his driving record is currently in good standing and explains that he was laid off from Pitney Bowes because it lost its contract with Liberty Mutual Insurance. Further, he explains that he was fired from Universal in January 2015, which he honestly shared in his application for Correction Officer Recruit. The appellant emphasizes that he has not been arrested in almost 15 years and that he desires a career in law enforcement.

Although provided the opportunity, neither Newark nor the Department of Corrections provided any additional information or argument for the Civil Service Commission (Commission) to review in these matters.

## 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.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.

*N.J.A.C.* 4A:4-6.1(a)7 states that an eligible may be removed from the list who has a prior employment history which relates adversely to the title.

*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, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine. 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).*

*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 the matter at hand, the record evidences that it was appropriate to remove the appellant's name from the subject lists. With respect to Police Officer (S9999R), Newark, the appellant's driver's abstract indicates that his license was suspended on six different occasions between March 2008 and June 2014, he had multiple moving violations and he received multiple tickets for failure to observe traffic signals, speeding, failure to wear seat belts and safety glass requirement between 2005 and 2014. While the appellant argues that his driver's license is currently in good standing, such repeated conduct reveals a complete disregard for motor vehicle 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. In this regard, it is recognized that a Police Officer is a law enforcement employee who must promote adherence to the law and holds a highly visible and sensitive position 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 Police Officers to present a personal background that exhibits respect for the law and rules. These multiple violations do not demonstrate possession of these qualities.

With respect to his arrests, both appointing authorities found that the appellant was arrested on April 26, 2002 for resisting arrest and possession of three bags of cocaine and 14 bags of marijuana and that he was found guilty of resisting arrest and the other charges were dismissed. The Department of Corrections found that he was charged with criminal trespass on April 6, 1999 and Newark found that the appellant was arrested on February 14, 2003 for resisting arrest, possession of five bags of cocaine, and distributing CDS on school property, but those charges were dismissed for lack of prosecution. While the appellant provided a letter from the Newark Municipal Court indicating that it did not have any information about the April 1999 and April 2002 incidents, this does not conclusively establish that these incidents did not occur. Indeed, these incidents appear to have occurred while the appellant was a juvenile. The appellant's New Jersey Criminal History Detailed Record, which clearly searched records based on the appellant's social security number, date of birth, and last reported address, indicates that he was arrested on these charges and found guilty of the resisting arrest charge. In this regard, 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 authorities, a municipal police department and a correctional facility, 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. It is noted that although it is clear that the appellant was never convicted of a crime, he has been arrested on several occasions. 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. In this case, the appellant was arrested on three occasions and these matters were properly considered by the appointing authorities in making their hiring decisions.

Moreover, the appellant falsified his application for Newark when he failed to indicate that he was fingerprinted and photographed when he was arrested on April 26, 2002, February 14, 2003, and June 23, 2004 and answered "no" to the question which asked if he had ever received a summons for a violation of the motor vehicle laws in this or any other state as the New Jersey Automatic Traffic System confirmed that he received multiple tickets. The Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. In this case, the appellant's history of motor vehicle summonses is material to a law enforcement position. Additionally, the appellant conceded that he was terminated from at least one position during the time frame when he was being considered for a position with the Department of Corrections.

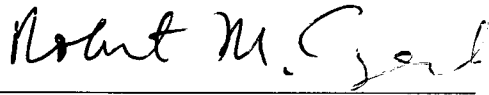
Accordingly, based on the totality of all these factors, the appointing authorities have presented sufficient cause to remove the appellant's name from the Police Officer (S9999R), Newark and Correction Officer Recruit (S9988T) eligible lists.

### ORDER

Therefore, it is ordered that these appeals 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 23<sup>RD</sup> DAY OF NOVEMBER, 2016



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