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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Abraam Meleika,
County Correction Officer (S9999R),
Hudson County

List Removal Appeal

CSC Docket No. 2017-15

ISSUED: APR 21 2017 (ABR)

Abraam Meleika, represented by Michael L. Prigoff, Esq., appeals the decision of the appointing authority to remove his name from the County Correction Officer (S9999R), Hudson County eligible list on the basis of an unsatisfactory criminal background.

The appellant took the open competitive examination for County Correction Officer (S9999R), which had a closing date of September 4, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified to the appointing authority on February 5, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal background. Specifically, the appointing authority asserted that the appellant was arrested for shoplifting in violation of *N.J.S.A. 2C:20-11(c)(4)* on April 11, 2009 in the Town of Secaucus and for simple assault in violation of *N.J.S.A. 2C:12-1(a)* on June 17, 2014 in the City of Bayonne. It noted that both charges were ultimately dismissed. In his Pre-Employment Background Questionnaire, the appellant claimed that the 2014 simple assault charge resulted from an incident where he was attacked from behind and responded in self-defense. He added that the charge was ultimately dismissed after it was settled in mediation.

On appeal to the Civil Service Commission (Commission), the appellant argues that a review of the factors set forth under *N.J.S.A. 11A:4-11* demonstrates that the removal of his name from the subject eligible list is not warranted because

both charges were not serious, the underlying events were isolated incidents, he was relatively young when the arrests occurred, the charges were ultimately dismissed and there is notable evidence of his rehabilitation. The appellant explains that he was charged with shoplifting at age 15 in 2009 because he had placed a bag of paintballs into a friend's backpack at a Walmart after the friend asked him to do so. The appellant maintains that he completed his purchases at a register and assumed that his friend was simultaneously paying for his own items, including the paintballs. The appellant submits a Juvenile Court Record from the Family Automated Case Tracking System (FACTS), which shows that the shoplifting charge was diverted through a Juvenile Conference Committee and dismissed on July 27, 2009 after the conditions, including the appellant's completion of five hours of community service and letters of apology to his parents and the retailer, were met. With regard to the 2014 simple assault charge, the appellant notes that he was 20 years old when the underlying incident occurred. He maintains that he was sucker-punched from behind by another man when exiting a convenience store and fought back in self-defense. The appellant claims that he was not arrested following the incident. Instead, he contends that the assailant filed the simple assault charge against him in an effort to seek reimbursement for his hospital bills. The appellant indicates that a court mediator found that the dispute was essentially a civil issue that would need to be resolved by a civil suit. The appellant claims that his father chose to settle the medical bills instead of retaining counsel to defend against the civil suit. The appellant notes that the charge was ultimately dismissed and he provides a certification from the Bayonne Municipal Court which indicates that the simple assault charge was dismissed on June 17, 2014. The appellant cites "[t]he lack of any other charges during his life" and "his public service commitment by his volunteer work for his church" as evidence of his rehabilitation.

In response, the appointing authority, represented by John A. Smith, III, Assistant County Counsel, argues that it appropriately removed the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. In the instant matter, it argues that, while the shoplifting and simple assault charges were ultimately dismissed, their relative proximity to the closing date of the examination and the nature of the underlying incidents reflects poorly upon the appellant's ability to meet the standards of conduct required for a County Correction Officer. The appointing authority emphasizes that the appellant does not provide any evidence to corroborate his account of either arrest and it contends that both arrests demonstrate a pattern of disregard of the law. The appointing authority stresses that while the juvenile shoplifting charge was dismissed, the fact that the appellant had to prepare letters of apology and perform community service demonstrates that he perpetrated the act of shoplifting. With the 2014 simple assault charge, the appointing authority intimates that the appellant's father would not have paid the alleged victim's medical bills if the appellant was not culpable. The appointing authority notes that the appellant was 20 years old at the time of

the underlying incident and it maintains that his reliance upon his father in settling the matter demonstrates an emotional immaturity that makes him unsuitable for the subject title. Additionally, it maintains that the appellant's community service does not evidence his rehabilitation because he only provides evidence to corroborate that he performed it as a mandatory condition for the dismissal of the 2009 shoplifting charge. The appointing authority submits a statement from its background investigator in support of its arguments. It also provides a copy of the appellant's Driver's Abstract and notes that it shows the appellant has multiple violations, including driving without a license.

In reply, the appellant argues that the Commission should not consider whether his driving history would support his removal from the subject eligible list since the record, namely an April 4, 2016 letter from the appointing authority's background investigator recommending against hiring the appellant, demonstrates that the appointing authority did not rely upon his driving record when it requested the removal of his name from the subject eligible list.

CONCLUSION

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 prohibits 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 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).

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). 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. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). 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.

An eligible's arrest and entry into a juvenile diversionary program may be properly considered in removing an eligible's name from an eligible list. Juvenile diversionary programs are similar to the Pre-Trial Intervention (PTI) Program. 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. Accordingly, dismissal of a criminal charge following participation in a juvenile diversionary program may be considered by an appointing authority in removing an eligible's name from an eligible list. 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.

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. 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. 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.

Finally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under N.J.A.C. 4A:4-4.7(a)4, the fact that an eligible was involved in such activity may reflect upon the

eligible's character and ability to perform the duties of the position at issue. *See In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here, as the appellant was arrested for disorderly persons offenses, the offenses did not rise to the level of crimes. Nevertheless, the appellant's arrests could still be considered in light of the factors noted in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine whether they adversely related to the employment sought.

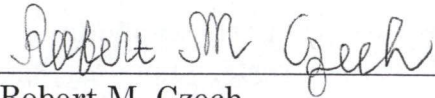
A review of the record in this matter indicates that the appellant's unsatisfactory criminal history, namely his 2009 and 2014 arrests, supports his removal from the subject eligible list. In this regard, it is recognized that a County Correction Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. County 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); *In re Phillips*, 117 *N.J.* 567 (1990). The public expects County Correction Officers to present a personal background that exhibits respect for the law and rules. Clearly, a criminal history that includes arrests for shoplifting and simple assault reflects poorly upon the appellant's ability to meet the high standards of conduct expected of a County Correction Officer. Here, the appellant's arrest history does not involve an isolated incident. The appellant was 15 years old when he was arrested for shoplifting in 2009 and 20 years old when he was arrested for simple assault in 2014. The appellant, in his Pre-Employment Background Questionnaire, claimed that he was charged with simple assault in 2014 after he acted in self-defense in response to an attack from behind and stated that the charge was dismissed after it was settled in mediation. However, on appeal, he has not submitted any corroborating information to support his account of the incident. Moreover, he has only provided limited evidence of his rehabilitation, namely his "public service commitment by his volunteer work for his church," and his avoiding criminal charges since 2014. Finally, both incidents were relatively recent. The appellant's 2009 arrest occurred approximately four years before the closing date and the 2014 arrest occurred after the closing date. Accordingly, the foregoing demonstrates sufficient grounds to remove the appellant's name from the subject eligible list on the basis of an unsatisfactory criminal history and it is therefore unnecessary to address the appellant's driving record. However, it is noted that with the further passage of time and additional evidence of rehabilitation, the appellant's criminal history will not be a sufficient basis to remove him from an 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 19TH DAY OF APRIL, 2017



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