

B-36



STATE OF NEW JERSEY

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

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-940

List Removal

ISSUED: APR 21 2017 (JET)

Joseph Hutsebaut, represented by Thomas J. Pisarri, Esq., appeals the removal of his name from the Correction Officer Recruit (S9988T), Department of Corrections, eligible list.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on April 7, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory criminal record. Specifically, the appointing authority alleged that on December 4, 2008, the appellant was charged with Harassment – Communication in a Manner to Cause Alarm in violation of *N.J.S.A. 2C:33-4A* (dismissed). The appointing authority indicated that the appellant was found delinquent with a 12-month deferred disposition on January 27, 2010. It also indicated that the charge was dismissed on May 12, 2016. It is noted that the subject list will expire on July 22, 2017.

On appeal to the Civil Service Commission (Commission), the appellant asserts that, at the time of the December 4, 2008 incident, he was only 16-years old when he and several of his high school friends made offensive remarks to a classmate. The appellant explains that he was one of several classmates who were charged with the same offense. The appellant adds that, after he served a 12-month readjustment period, the charges were dismissed.¹ In addition, the appellant states

¹ The appellant notes that he was charged with a petty disorderly offense, which is the least serious offense and does not constitute a crime.

that he served in the military and as a Volunteer Fire Fighter, and worked as a Security Officer.² The appellant adds that he is enrolled at Bergen County Community College, and he has friends of many ethnicities. Moreover, the appellant asserts that he has learned valuable life lessons since the time the offense occurred, and he has not been charged with any other incidents since that time. In this regard, he now lives a law abiding life and it is his dream to become a law enforcement officer. As such, he maintains that sufficient time has passed to show that he has been rehabilitated for the Correction Officer Recruit position. In support, he provides three letters of recommendation.

In response, the appointing authority maintains that the appellant's name should be removed from the list, as his background adversely relates to the employment sought. Specifically, the appointing authority asserts that, on December 4, 2008, the appellant was charged with Harassment – Communication in a Manner to Cause Alarm – in violation of *N.J.S.A. 2C:33-4A*. The appointing authority adds that, on January 27, 2010, the appellant was sentenced to a six-year period of readjustment, and the charge was dismissed on May 12, 2016. As such, the appointing authority asserts that the charges against the appellant were not dismissed at the time he applied for the Correction Officer Recruit position and only a month prior to when he was scheduled to appear for preemployment processing. In addition, the appointing authority explains that the employment application is clear that applicants may be removed when convicted of a disorderly persons offense within 10 years of the closing date for the current list, and the appellant acknowledged the December 4, 2008 charges on the application. Moreover, the appointing authority asserts that, since he initialed each page of the application, the appellant was aware that he could be removed from the list as a result of his background.

In response, the appellant asserts that the December 4, 2008 charge was not dismissed by order dated May 12, 2016. Rather, he states that the matter was heard on January 27, 2009 and was dismissed on January 27, 2010. The appellant adds that the 12-month period of readjustment commenced on January 27, 2009, the date the order was signed, and was dismissed on January 27, 2010. Further, the appellant contends that no documentation indicates that the charges were dismissed in 2016 and that he served a period of readjustment for six years. Moreover, the appellant avers that he was involved in an isolated incident, as he only used bad judgement on one occasion as a juvenile.

In support, the appellant submits a November 3, 2016 letter signed by Anna Skokowska, Senior Probation Officer, indicating that the appellant's juvenile matter was heard on January 27, 2009, where he pled guilty to the Harassment charge and was placed on a period of adjustment (deferred disposition) for 12 months. The letter further indicates that compliance with the order would result in the dismissal

² The appellant indicates that he obtained a SORA (Security Officer Registration Act) certification.

of the charge on January 27, 2010 and no additional conditions were ordered. The letter also confirms that the appellant was compliant with the order and the charge was dismissed as of January 27, 2010.

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.

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 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. 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).

Additionally, *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 an appointment.

In the instant matter, the appellant argues that his name should be restored to the eligible list. The appellant explains that during the December 4, 2008 incident, he and other juveniles made inappropriate remarks to another student, and all of the juveniles involved were charged with the same offense. He argues that he has learned from his prior mistakes that occurred as a result of the incident when he was juvenile. Further, he argues that he served a 12-month readjustment period, and he provides documentation to show the charges were dismissed on January 27, 2010. The appellant states that he was only involved in an isolated incident as a juvenile, and maintains that he has been rehabilitated. In this regard, he states that he has been gainfully employed as a Security Officer and served in the military since the time of the incident. The Commission agrees. In this case, it is doubtful that any employer, including a law enforcement agency, would find the one-time careless actions of a 16-year old that led to his being brought up on juvenile charges to reflect adversely on his character nearly 10 years later as of the date of this decision and make him an unsuitable candidate for employment. In other words, this one isolated incident can by no means be considered automatically disqualifying for the position sought. This finding is also bolstered by the fact that the appellant explained the incident in detail on the employment application and in this matter. Additionally, the November 3, 2016 letter clearly shows that the matter was dismissed and the appellant completed the period of readjustment. Moreover, the Commission is not bound in any way by an appointing authority's internal standards in assessing the propriety of a candidate's removal from a list.

Therefore, the appointing authority has not established a sufficient basis to remove the appellant's name from the eligible list.

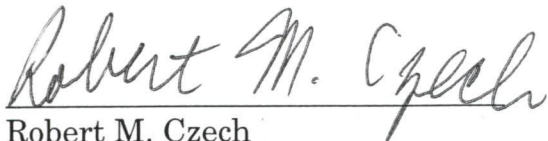
Accordingly, given the position at issue and in consideration of the totality of the circumstances, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted, the appellant's name be restored to the list for Correction Officer Recruit (S9988T), Department of Corrections, for consideration for appointment at the time of the next certification for prospective employment opportunities only. It is further ordered that, if the appellant's name is not certified before the expiration date of the list, the list will be revived at the time of the next certification.

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



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 Hutsebaut
Thomas J. Pisarri, Esq.
Elizabeth Whitlock
Kelly Glenn