



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of D.B., Correctional
Police Officer (S9988V), Department
of Corrections

List Removal Appeal

CSC Docket No. 2019-1815

ISSUED: JUNE 28, 2019 (HS)

D.B., represented by *Ciro Spina, Esq.*, appeals the removal of his name from the eligible list for Correctional Police Officer¹ (S9988V), Department of Corrections on the basis of an unsatisfactory background report.

The appellant, a non-veteran, took and passed the open competitive examination for Correctional Police Officer (S9988V), which had a closing date of May 31, 2017. The resulting eligible list promulgated on September 28, 2017 and expires on September 27, 2019. The appointing authority requested the removal of the appellant's name due to an unsatisfactory background report. Specifically, the appointing authority asserted that the appellant was charged with possession of drug paraphernalia in violation of *N.J.S.A. 2C:36-2* on August 10, 2002, for which the appellant received a conditional discharge; urinating in public in violation of a local ordinance on May 12, 2004, for which the appellant was found guilty and paid a fine; violation of a local noise ordinance on July 20, 2005, for which the appellant was found guilty and paid a fine; possession of marijuana/hash in violation of *N.J.S.A. 2C:35-10(a)4* on July 20, 2005, which was dismissed; possession of drug paraphernalia in violation of *N.J.S.A. 2C:36-2* on July 20, 2005, which was dismissed; and violation of a local public nuisance ordinance on June 9, 2007, for which the appellant was found guilty and paid a fine.² In addition, the appellant's driving record reflected a violation for driving while intoxicated (DWI) on May 26, 2008, for which the appellant paid a fine and had his license suspended. His license

¹ Pursuant to *N.J.S.A. 11A:2-11.1*, effective May 1, 2018, the title of Correction Officer Recruit has been retitled to Correctional Police Officer.

² All records concerning the foregoing charges were expunged in 2012.

was also suspended on five occasions for having too many points and failure to pay insurance surcharges with the last of these suspensions ending on December 3, 2010.

On appeal to the Civil Service Commission (Commission), the appellant describes the circumstances of each of his arrests as follows. On August 10, 2002, the appellant was in his vehicle and a friend had drug paraphernalia. On May 12, 2004, the appellant was in Atlantic City, wherein he had to urinate and could not find a bathroom. He eventually had to relieve himself. On July 20, 2005, the appellant was in Barnegat Light on the beach with a group of people and was charged with a noise violation. On June 9, 2008, the appellant was in Seaside Heights and yelled. Turning to his driving record, the appellant states that following his DWI arrest on May 26, 2008, he submitted to an evaluation and it was found that further treatment/education was not warranted at the time. He notes that his license has not been suspended since 2010. In 2012, the appellant enrolled in and successfully completed the AAA Driver Improvement Program, Managing Visibility, Time and Space. His five-year driver abstract shows no driving violations and annual safe driving point deductions for several years.

The appellant maintains that the ordinance violations are not considered serious in nature. He states that his arrests occurred when he was between the ages of 19 and 25 years of age and argues they were youthful indiscretions for which he is remorseful as they are not reflective of his present character. The appellant notes that he has not been arrested in over 10 years and has lived an exemplary life as a productive member of society. In this regard, the appellant is a member of the Army National Guard, completed the Basic Combat Training Course in April 2016, is in good standing and has not been disciplined. He is a substitute teacher, a position he has held since June 5, 2017 and in which he has not been disciplined. He has also worked as a hospital security officer and with the Transportation Security Administration (TSA). He is enrolled in the Atlantic County Police Academy Alternate Route Program and graduated from Rowan University with a Bachelor's degree. In addition, the appellant maintains that his expungement must be treated as the equivalent of evidence of rehabilitation. In support, the appellant submits his expungement order; certificate of completion of the AAA Driver Improvement Program, Managing Visibility, Time and Space; five-year driver abstract; Army identification card; employment verification report indicating his employment as a substitute teacher; an e-mail indicating his acceptance into the Atlantic County Police Academy Alternate Route Program; and other documents.³

In response, the appointing authority emphasizes that since a law enforcement title is at issue here, the appellant's expungement did not prohibit it from rejecting him. It argues that the appellant's arrests cannot reasonably be

³ The appellant's graduation from Rowan University with a Bachelor's degree and employment as a hospital security officer and with the TSA were indicated on his preemployment application.

described as youthful indiscretions as he was an adult at the time of each arrest and when coupled with his history of driver's license suspensions. The appointing authority requests that the appellant's removal from the subject eligible list be sustained. In support, it submits the appellant's preemployment application, among other documents.

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 that includes a conviction for a crime that 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 Commission or designee may determine. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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(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. 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:4-6.3(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 name from an eligible list was in error.

While the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter indicates that the appellant's removal from the subject eligible list is unwarranted. The appellant's 2002 possession of drug paraphernalia charge was resolved via a conditional discharge, and his ordinance violations are not serious offenses. Although he does have a DWI violation and license suspensions on his driving record, the appellant has demonstrated a desire to improve his driving via completion of the AAA Driver Improvement Program. The appellant's last suspension ended more than six years before the examination closing date, and this also appears to be the last negative item in the appellant's background. Moreover, the appellant has demonstrated other evidence of rehabilitation. Specifically, the appellant is a member of the Army National Guard and substitute teacher. He previously held positions as a hospital security officer and with the TSA. He earned a Bachelor's degree and is enrolled in the Atlantic County Police Academy Alternate Route Program. Further, the appellant obtained an expungement order, and the foundation for an expungement is the equivalent of evidence of rehabilitation. *See In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006). Accordingly, based on the totality of the record in this matter, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the subject eligible list. Nonetheless, the appellant's background would be a sufficient basis to bypass him.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the eligible list for Correctional Police Officer (S9988V), Department of Corrections for prospective employment opportunities only.

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 26TH DAY OF JUNE, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c. D.B.
Ciro Spina, Esq.
Elizabeth Whitlock
Kelly Glenn