



**STATE OF NEW JERSEY**

In the Matter of Natalie Garcia,  
Correctional Police Officer (S9988V),  
Statewide

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

CSC Docket No. 2019-1996

List Removal Appeal

**ISSUED: JUNE 28, 2019 (SLK)**

Natalie Garcia appeals her removal from the eligible list for Correctional Police Officer (S9988V), Statewide on the basis that she possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Correctional Police Officer (S9988V), which had a May 31, 2017 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking her removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal background. Specifically, the appointing authority indicated that on February 26, 2014, the appellant was charged with 4<sup>th</sup> degree violations of *N.J.S.A. 2C:12-1c(2)*, assault by auto or vessel and *N.J.S.A. 2C:12-1c(1)*, assault by auto or vessel-reckless. Thereafter, the charges were dismissed through the completion of a 12-month pre-trial intervention diversionary program.

On appeal, the appellant presents that on May 5, 2014, she pled guilty to violating *N.J.S.A. 39:4-50*, operating under influence of liquor or drugs (DUI), but was not found guilty or sentenced for violating *N.J.S.A. 2C:12-1c(2)* or *N.J.S.A. 2C:12-1c(1)*. Instead, she indicates that after completing the diversionary program, all charges were dismissed except the DUI. The appellant states that it was never her intention to injure anyone involved in this accident. She presents that prior to this incident, she had never been arrested nor had she had any other negative interactions with the law. The appellant acknowledges that the charges against her

were serious. However, she asserts that she has taken the necessary actions to improve her character and requests the opportunity to be given a chance to serve in the subject title.

In response, the appointing authority indicates that being charged with a 4<sup>th</sup> degree crime or higher meets its criteria for removal. It emphasizes that the appellant entered a pre-trial intervention diversionary program due to these charges and the charges were only dismissed after certain conditions were met. The appointing authority argues that her background is not suitable for the subject title.

## 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 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 (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, participation in a diversionary 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). In *Grill, supra*, the Appellate Division indicated that the diversionary 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. 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. Thus, the appellant's arrest and entry into a diversionary program could still be properly considered in removing his name from the subject eligible list. Compare *In the Matter of Harold Cohrs* (MSB, decided May

5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his diversionary program).

*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.

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In the instant matter, a review of the record indicates that the appointing authority had a valid reason to remove the appellant's name from the list. Specifically, in February 2014, the appellant was charged with two separate assault by vehicle offenses and found guilty of DUI. This is a serious offense where the appellant exercised poor judgement and endangered her life and others. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police 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). *See also In re Phillips*, 117 *N.J.* 567 (1990). The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. Moreover, as this incident took place a little more than three years prior to the May 31, 2017 closing date, there was insufficient time for her to demonstrate rehabilitation.

Accordingly, the appellant has not met her burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Correctional Police Officer (S9988V), Statewide eligible list. The Commission notes, however, that with the further passage of time, and absent any further adverse incidents, the appellant's background as presented in this matter will be insufficient to remove her name from future similar lists.

### **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 26<sup>th</sup> DAY OF JUNE, 2019



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