



STATE OF NEW JERSEY

In the Matter of Louis Kishko,
Correctional Police Officer (S9988V),
Department of Corrections

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

CSC Docket No. 2019-3614

List Removal Appeal

ISSUED: SEPTEMBER 12, 2019 (SLK)

Louis Kishko appeals his removal from the eligible list for Correctional Police Officer (S9988V), Department of Corrections on the basis that he possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Correctional Police Officer (S9988V), which had an May 31, 2017 closing date, achieved a passing score, and was ranked on the subsequent eligible list, which expires on September 27, 2019. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal background. Specifically, the appointing authority indicated that the appellant entered a diversionary program in 2012 for disorderly conduct involving marijuana and for having an open container in Pennsylvania.

On appeal, the appellant presents that he was only 18 years old at the time of the incident and has had no other issues since. He indicates that completed 10 hours of community service as part of a diversionary program. The appellant requests to be given a chance to pursue his dream of a career in law enforcement.

In response, the appointing authority presents that it has no background reports from its database to review and only has a vague description of the charges and incident. Therefore, it indicates that it cannot determine the severity of the appellant's actions or ascertain rehabilitation based upon the information provided.

Further, its criteria for removal indicates that it can remove a candidate from a list who has a disorderly persons offense or entered a diversionary program within seven years of applying for a position.

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.

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). *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 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 the diversionary program could still be properly considered in removing his or her 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 Civil Service Commission (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 appellant entered a diversionary program in 2012 for disorderly conduct involving marijuana and for having an open container in Pennsylvania. While the appointing authority indicates that it cannot conclude the severity of the offense or ascertain that appellant's rehabilitation as the incident was not in its database, the charges in question are relatively minor in nature. This is further supported by the appellant's statement that the matter was resolved by him entering a diversionary program, which consisted of 10 hours of community service, which the appointing authority has not disputed. Additionally, the appellant was only 18 years old at the time of the incident and the incident took place approximately five years before the May 31, 2017 closing date. Moreover, the appointing authority has not presented any other grounds for his removal. While the Commission is aware of the high standards for a Correctional Police Officer, a law enforcement position, the Commission finds that ample time has passed for the appellant to have demonstrated sufficient rehabilitation.

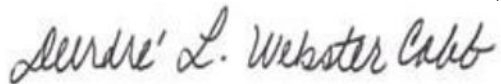
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient cause for removing his name from the Correctional Police Officer (S9988V), Department of Corrections eligible list.

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), to be considered for appointment at the next certification, for prospective employment opportunities only. Further, the Commission orders that should the appellant's name not be certified before the expiration of the Correctional Police Officer (S9988V), Department of Corrections eligible list, the subject eligible list shall be revived so that the appellant may be considered for appointment 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 10th DAY OF SEPTEMBER, 2019



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