



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Christopher Griffin,  
Correctional Police Officer (S9988U  
& S9988V), Department of  
Corrections

List Removal Appeals

CSC Docket Nos. 2019-2728 and  
2019-3606

ISSUED: FEBRUARY 18, 2020 (ABR)

Christopher Griffin appeals his removals from the Correctional Police Officer (S9988U & S9988V), Department of Corrections (DOC) eligible lists on the basis of an unsatisfactory criminal background. These appeals have been consolidated herein, as they address common issues.

The appellant, a non-veteran, applied for and passed the examinations for Correctional Police Officer (S9988U) which had a closing date of August 31, 2016 and Correctional Police Officer (S9988V) which had a closing date of May 31, 2017. The S9988U eligible list promulgated on March 30, 2017 and expired on June 18, 2019 and the S9988V eligible list promulgated on September 28, 2017 and expired on September 27, 2019.

The appellant's name was subsequently certified to the appointing authority from both the S9988U and S9988V eligible lists. The appointing authority requested the removal of the appellant's name from these lists on the basis of an unsatisfactory criminal background. Specifically, the appointing authority indicated that the appellant was charged with theft by unlawful taking in violation of *N.J.S.A. 2C:20-3A* in May 2011 based upon an allegation that in June 2010 or July 2010 he took vehicle parts that belonged to the Borough of East Rutherford<sup>1</sup> (East Rutherford) and placed them on his personal vehicle. It stated that the

<sup>1</sup> Agency records indicate that the appellant was employed by the Borough of East Rutherford as a Laborer 1 from September 15, 2009 to his resignation in good standing, effective March 12, 2013. It is noted that this agency has no record of any discipline related to this incident.

charge was diverted through the Pre-Trial Intervention Program (PTI) and ultimately dismissed in March 2015.

On appeal to the Civil Service Commission (Commission), the appellant argues that because he was not convicted of theft by unlawful taking, his criminal record does not meet the appointing authority's standards for removal, as set forth in its pre-employment application. He also states that he is presently seeking to expunge the foregoing charge from his criminal record. The appellant also submits a copy of the PTI Order of Dismissal.

In response, the appointing authority states that under its criteria, an eligible may be removed if he or she has entered into PTI within seven years of the promulgation date of an eligible list. It maintains that the appellant has not provided sufficient information about his rehabilitation to demonstrate that he was improperly removed from the subject eligible list. In support, the appointing authority submits a copy of the appellant's pre-employment application and New Jersey Automated Complaint System (ACS) records related to the criminal charge at issue.

It is noted that a review of the appellant's pre-employment application indicates that he has been regularly employed since 2008 and that he possesses a firearm permit.

## 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.

*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.

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. The Appellate Division has observed that while the PTI Program provides a channel to resolve a criminal charge without the risk of conviction, it has **not** been construed to be a favorable disposition. *See In the Matter of Clifton Gauthier, Rockaway Township, \_\_\_ N.J. Super. \_\_\_* (App. Div. 2019); *See also Grill, supra*. 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 PTI 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 PTI).

In the instant matter, although the appointing authority has cited its internal criteria as a basis for removing the appellant's name from the subject eligible list, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). It is undisputed that the appellant was accused of stealing vehicle parts approximately six years before the closing date for the subject eligible lists. The appellant was 20 years old at the time of the incident. The Commission observes that this appears to be an isolated incident, as it is his only negative interaction with law enforcement as an adult which is noted in the record. Finally, it is noted that the appellant has been regularly employed since the time of this incident and possesses a firearm permit. Accordingly, the foregoing demonstrates that the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient grounds to remove the appellant's name from the Correctional Police Officer (S9988U & S9988V), Department of Corrections eligible lists.

### ORDER

Therefore, it is ordered that this appeal be granted and the Correctional Police Officer (S9988U), Department of Corrections and Correctional Police Officer (S9988V), Department of Corrections eligible lists be revived in order for the

appellant to be considered for appointment at the time of the next certification 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 12<sup>TH</sup> DAY OF FEBRUARY, 2020



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