



STATE OF NEW JERSEY

In the Matter of Andy Echevarria-
Ruiz, Correctional Police Officer
(S9988A), Department of Corrections

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

CSC Docket No. 2020-645

List Removal Appeal

ISSUED: APRIL 17, 2020 (SLK)

Andy Echevarria-Ruiz appeals his removal from the eligible list for Correctional Police Officer (S9988A), Department of Corrections on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988A), which had a January 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory criminal record. Specifically, the appointing authority indicated that the appellant had been convicted two or more times of *N.J.S.A. 2C:35-10*, possession, use or being under the influence or failure to make lawful disposition of a controlled dangerous substance.

On appeal, the appellant presents that he was not convicted of the first criminal charge on February 3, 2011. Instead, the charges were dismissed after he successfully completed a conditional discharge program. The appellant indicates that he was only convicted on his second arrest because his girlfriend was driving his car and she refused to take the breathalyzer test. He asserts that he was not smoking or high and the police officer said he found a very tiny piece of marijuana, which the police officer claimed that the appellant ate, but he did not. In court, the test results for marijuana came back as positive with a tiny amount that was less than a one-fourth of a gram. In court, his girlfriend was convicted of either driving under the influence or possession of a controlled dangerous substance. The appellant states that he did not have the money to go to trial.

In reply, the appointing authority states that the appellant was charged with possessing less than 50 grams of marijuana in February 2011 and July 2016. Its criteria for removal indicates that a candidate can be removed from a list for having two or more convictions for this offense.

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:4-6.3(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). Further, it is noted that the completion of a conditional discharge program is neither an acquittal nor a conviction and arrests may be considered for candidates for law enforcement positions.

In the instant matter, the appellant was twice arrested for possession of marijuana. The appellant claims that for the last arrest, it was his girlfriend and not himself, who possessed or used marijuana while he was a passenger and his girlfriend was driving his car. The Commission notes that other than the appellant's statement, there is no evidence in the record to support this statement. Regardless, even if true, the appellant made a poor choice by being in a passenger in a car with someone who either used or possessed marijuana. This is especially true as he previously had been arrested for possession or use of marijuana. Such qualities are unacceptable for an individual seeking a position as a Correctional Police Officer, a law enforcement employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). In this

regard, the public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. Further, as the last arrest was in July 2016, which was less than three years prior to the January 31, 2019 subject examination closing date, there was insufficient time for him to demonstrate rehabilitation. However, with sufficient passage of time and no new negative interactions with the law, the background as indicated in this matter would be insufficient to remove his name from future Correctional Police Officer lists.

Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing her name from the Correctional Police Officer (S9988A), Department of Corrections eligible list.

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 15TH DAY OF APRIL , 2020



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