



STATE OF NEW JERSEY

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

In the Matter of K.O., Correctional
Police Officer (S9988A), Department
of Corrections

List Removal Appeal

CSC Docket No. 2020-821

ISSUED: APRIL 17, 2020 (HS)

K.O. appeals the removal of her name from the eligible list for Correctional Police Officer¹ (S9988A), Department of Corrections on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open-competitive examination for Correctional Police Officer (S9988A), which had a closing date of January 31, 2019. The resulting eligible list promulgated on June 27, 2019 and expires on June 26, 2021. The appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that as a result of a February 2, 2006 incident,² the appellant was charged as a juvenile with aggravated assault in violation of *N.J.S.A. 2C:12-1b(5)(d)*, which was disposed through diversion.

On appeal to the Civil Service Commission (Commission), the appellant states, among other things, that she has what it takes for a career as a Correctional Police Officer.

In response, the appointing authority reiterates that it removed the appellant from the subject eligible list due to the above-described charge. Thus, it requests that its decision be sustained. In support, the appointing authority submits copies

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 The appellant was 16 years old at the time.

of the appellant's preemployment application³ and documentation of the appellant's charge from the Family Automated Case Tracking System.

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).

Further, it is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). *N.J.S.A.* 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and

³ The application indicates that the appellant graduated from high school in 2008 and earned Associate's and Bachelor's degrees. The application also indicates that the appellant has been employed in various positions, including her current position as an Assistant Teacher with a child care center.

the eligible's ability to perform the duties of the position at issue. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority when requested for purposes of making a hiring decision.

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 her 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 juvenile charge was disposed through diversion. Additionally, the underlying incident occurred approximately 13 years before the examination closing date when the appellant was a juvenile of 16 years of age and represents her only negative interaction with law enforcement. Further, the appellant has proffered evidence of rehabilitation, as she graduated from high school and earned Associate's and Bachelor's degrees. She has also been employed in various positions, including her current position as an Assistant Teacher with a child care center. Accordingly, based on the totality of the record in this matter, the appellant has met her burden of proof and the appointing authority has not shown sufficient justification for removing her name from the subject 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 (S9988A), Department of Corrections for prospective employment opportunities.

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



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. K.O.
Elizabeth Whitlock
Kelly Glenn