



STATE OF NEW JERSEY

In the Matter of Eddie Acosta,  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2172

Request for Reconsideration

ISSUED: **AUG 15 2014** (JET)

The Department of Corrections (DOC) requests reconsideration of the attached final administrative decision, rendered on December 4, 2013, which restored Eddie Acosta's name to the Correction Officer Recruit (S9987M), Department of Corrections, eligible list.

In the prior decision, DOC requested the removal of Acosta's name from the subject eligible list on the basis of an unsatisfactory criminal record and falsification of his employment application. Specifically, the DOC asserted that Acosta was charged with Receiving Stolen Property (vehicle) in violation of *N.J.S.A. 2C:20-7*, Unauthorized Use of Vehicle in violation of *N.J.S.A. 2C:20-10*, and Larceny-Parts of a Vehicle in violation of *N.J.S.A. 2C:20-3* (dismissed). Acosta appealed to the Division of Classification and Personnel Management (CPM), which upheld the removal of Acosta's name from the eligible list. In his appeal to the Civil Service Commission (Commission), Acosta argued, among other things, that more than 24 years have passed since he was arrested and charged with Receiving Stolen Property (vehicle) and that he was never charged with Unauthorized Use of a Motor Vehicle. Since the incident happened more than 24 years ago, was an isolated incident, and Acosta presented evidence of his rehabilitation, the Commission restored his name to the list.

In the instant matter, DOC asserts that it was unable to respond to the appellant's contentions in the original matter since it did not receive notice of the initial appeal. Further, DOC argues that the Commission's prior decision failed to consider the issue regarding Acosta's falsification of the employment application.

Specifically, DOC states that Acosta failed to list on the employment application that he was convicted for Unauthorized Use of a Motor Vehicle. It also states that he was incarcerated for a period of seven days. In this regard, in response to question 43 on the employment application, "Have you ever been arrested, indicated, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction," Acosta only listed the charges of Larceny-Parts of a Vehicle and Receiving Stolen Property. However, he did not indicate that the Receiving Stolen Vehicle charge was disposed of as Unauthorized Use of a Motor Vehicle. In support, DOC provides documentation to show that Acosta was charged with Receiving Stolen Vehicle on October 9, 1989. DOC adds that the employment application required Acosta to list all of the charges against him even if his records were expunged. In addition, DOC explains that Acosta faxed additional information on April 19, 2012 in order to correct some discrepancies, which shows that he was aware of the requirement to submit accurate information on the employment application. DOC adds that it was unable to conduct an adequate review of Acosta's background since he did not submit a completed employment application. Moreover, DOC maintains that it properly removed him for falsification of the employment application and for an unsatisfactory criminal record.

Additionally, DOC requests clarification as to the prior Commission decision since Acosta is under the impression that he is to be immediately restored and considered for appointment. In this regard, DOC states that the Commission's December 4, 2013 order only indicates that Acosta's name would be certified at the time of the next appointment for prospective employment opportunities only.

In response, Acosta, represented by Erik C. Acosta, Esq., asserts, among other things, that he properly listed on the employment application that he was charged with Receiving Stolen Property in violation of *N.J.S.A. 2C:20-7*. He also notes that his seven day incarceration was not the result of his guilty plea to the charge, but rather, was a seven day jail credit as he was unable to post bail pending the court date. Further, Acosta provides a letter dated February 23, 2009 from the Division of State Police in response to his request for a criminal history background check. Attached to that correspondence is a copy of the February 20, 2009 New Jersey Criminal History Detailed Record he was provided by the New Jersey State Police. In relation to his October 9, 1989 arrest, according to this report, under Summons/Warrant S317764, Acosta was charged with Receiving Stolen Vehicle but found guilty of Receiving Stolen Property. It does not indicate that he was charged with or found guilty of Unauthorized Use of Vehicle. However, the May 5, 2012 criminal history report relied on by the appointing authority, in relation to his October 9, 1989 arrest under Summons/Warrant S317764, indicates that he was charged with Receiving Stolen Vehicle but found guilty of Unauthorized Use of a Vehicle. Although it is unclear as to why the disposition of the 1989 charge was changed, the appellant maintains that he disclosed all of the relevant information. In addition, Acosta contends that the incident occurred 24 years ago and he has

worked in the medical field for over 20 years. Moreover, Acosta states that he has not been involved with any additional infractions since that time.

It is noted that the documentation provided by DOC from the State Police Fingerprint Identification Record indicates that Acosta was charged with Receiving Stolen Property in 1989. However, the documentation also indicates that the Receiving Stolen Property disposition was changed to Unauthorized Use of a Motor Vehicle. The documentation is not clear regarding why the disposition was changed.

### CONCLUSION

*N.J.A.C. 4A:2-1.6(b)* sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

Initially, DOC argues that it was unable to provide a response in the prior matter because it did not receive notice of the initial appeal from this agency. However, a review of the record reflects that a 20-day letter providing the DOC an opportunity to respond to Acosta's initial appeal was sent to DOC from this agency on February 20, 2013.

In the instant matter, there is no basis on which to grant reconsideration. The DOC asserts that Acosta failed to indicate on the employment application that the charge of Receiving Stolen Vehicle was disposed of as Unauthorized Use of Motor Vehicle. Based on the February 20, 2009 criminal history report provided to him by the State Police, in response to question 43 on the employment application, Acosta correctly listed that he pled guilty to Receiving Stolen Property in 1989. The fact that he did not list that the charge of Receiving Stolen Vehicle was disposed as Receiving Stolen Property does not evidence that Acosta intended to falsify his application. Moreover, for some unexplained reason, the record demonstrates that the May 5, 2012 criminal history report relied upon by the DOC indicates that the disposition of Summons/Warrant S317764 was changed to Unauthorized Use of Vehicle. There is absolutely nothing in the record indicating that he was charged twice with Receiving Stolen Vehicle and that he received two different dispositions as a result of such charges. In other words, the appellant indicated on his application the information that was provided to him on the February 20, 2009 criminal history report. Although the information provided by DOC indicates that the original disposition was changed to Unauthorized Use of a Motor Vehicle, the record in this case does not indicate that he falsified his application. Additionally, DOC did not provide any substantive evidence to show that the omission prevented it from conducting an adequate background investigation.

With respect to his seven day incarceration, the DOC failed to provide the reasons for that incarceration nor did it dispute the appellant's assertion that he was incarcerated because he could not pay the required bail, not because he was convicted. The mere fact that the appellant had been incarcerated, without evidence of a conviction or the facts surrounding those incarcerations, is not, in and of itself, sufficient to remove his name from the subject eligible list. *See In the Matter of Aja Scott* (CSC, decided February 26, 2014). Significantly, it has been more than 20 years since this incident had occurred and the DOC has not provided any documentation to refute that Acosta has been rehabilitated.

Regarding the DOC's request to clarify the prior order, since the appointing authority, in its discretion, could have used Acosta's background to bypass his name for appointment, he is not entitled to a mandated appointment from this eligible list. However, based solely on equitable considerations, the Commission ordered that the subject eligible list be revived the next time the DOC is making appointments so Acosta's name could be certified for prospective employment opportunities. The order did not indicate that he should be immediately appointed as a Correction Officer Recruit.

Accordingly, DOC has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

### ORDER

Therefore, it is ordered that this request for reconsideration 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 13<sup>th</sup> DAY OF AUGUST, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
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Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: Eddie Acosta  
Erik C. Acosta, Esq.  
Jennifer Rodriguez  
James Mulholland  
Kenneth Connolly



STATE OF NEW JERSEY

In the Matter of Eddie Acosta,  
Correction Officer Recruit (S9987M),  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2013-2121

List Removal Appeal

ISSUED: DEC 04 2013 (JET)

Eddie Acosta, represented by Erik C. Acosta, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Correction Officer Recruit (S9987M), Department of Corrections, eligible list on the basis of an unsatisfactory criminal record and falsification of his employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9987M),<sup>1</sup> achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on June 10, 2011. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record and falsification of his employment application. Specifically, the appointing authority asserted that the appellant was charged with Receiving Stolen Property (vehicle) in violation of *N.J.S.A. 2C:20-7a* and with Unauthorized Use of Vehicle in violation of *N.J.S.A. 2C:20-10*. The appellant was also charged with Larceny-Parts of a Vehicle (dismissed) in violation of *N.J.S.A. 2C:20-3*. The appointing authority also alleged that the appellant failed to disclose on his employment application that he was charged with Unauthorized Use of Vehicle. The appellant appealed to CPM, asserting, among other things, that he was not charged with Unauthorized Use of Vehicle and, as such, he could not list such information on his employment

<sup>1</sup> It is noted that the Correction Officer Recruit (S9987M), Department of Corrections eligible list promulgated on June 10, 2011 and expired on June 9, 2013.

application. However, CPM found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he was employed at National Car Rental on the date of the offense in 1989 and his supervisors allowed him to borrow a company rental car so he could take his pregnant girlfriend for an OB/GYN appointment. The appellant adds that he was unaware that the rental car was previously reported as stolen before he took possession of the vehicle and he was subsequently arrested in Newark. In this regard, the appellant was charged with the third degree offense of Receiving Stolen Property (Vehicle) and he completed probation, paid fines and was issued a seven day jail time credit. The appellant explains that it was an isolated incident since more than 24 years have passed since that time and the charges were expunged.<sup>2</sup> In this regard, the events that led to the appellant's sole conviction occurred 24 years ago in 1989 when he was approximately 23 years old. The appellant adds that he is now married, has children and is 44 years old. Therefore, he maintains that his name should not have been removed due to an isolated incident that occurred 24 years ago. Moreover, the appellant asserts that the Unauthorized Use charge does not appear on his criminal record.

Additionally, the appellant maintains that his involvement should have been given little weight since he has been rehabilitated. Further, the appellant asserts that he has obtained CPR and medical training and has been employed at UMDNJ since October 1998. In this regard, he is now a supervisor at UMDNJ and has dedicated over 20 years to the field of medical services. The appellant adds that he has been a certified Emergency Medical Technician (EMT) since 1991 and has worked in Emergency Medical Services (EMS) continuously since that time. The appellant also obtained his Firearm's Identification (FID) card and he successfully completed a Carrying Concealed Weapons (CCW) Security Course. He is presently employed part-time as an armed guard and is certified in the use of handcuffs, baton, mace, and firearms. The appellant states that such training would undoubtedly be beneficial in the completion of the Correction Officer's training academy. Moreover, there is nothing in the appellant's history which is adverse to the employment sought and nothing that suggests that he lacks good character.

The appellant also contends that he did not falsify the employment application because he was never charged with the Unauthorized Use charge. Thus, since he was not charged with Unauthorized Use, he could not list that charge on the employment application. In addition, the appellant avers that CPM's decision did not address the issue in regard to falsification of the employment

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<sup>2</sup> The appellant submits evidence that the expungement was granted on August 12, 2009.

application. In this regard, it only upheld his removal based on an unsatisfactory criminal record.

The appellant's supervisor, Kevin Jenkins, provides a letter in support of the appellant's contentions. Specifically, Jenkins indicates that the appellant has been employed at UMDNJ since October 1998 and he recommends the appellant for employment as a Correction Officer Recruit.

Despite being provided with the opportunity, the appointing authority did not provide a response.

It is noted that the appellant was charged with Receiving Stolen Property (Vehicle) on October 9, 1989 in violation of *N.J.S.A. 2C:20-7a*, for which he was found guilty and paid a \$30 fine. Further, the appellant was charged with Larceny-Parts of a Vehicle on September 7, 1992 in violation of *N.J.S.A. 2C:20-3* which was dismissed.

### CONCLUSION

*N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the Commission to remove an individual from an eligible list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows for the removal 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 an appointment. Additionally, *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 of a pardon or an expungement shall prohibit removal from a list, 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.



Moreover, *N.J.S.A. 11A:4-10* provides that an eligible for a law enforcement, fire fighter or correction officer title may be questioned as to any arrest. 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. For example, in *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992), 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*. *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.

Moreover, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement. See *N.J.S.A. 2C:52-3* and *N.J.S.A. 2C:52-8*.

In the instant matter, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. In this case, the documentation indicates that the appellant was arrested and found guilty only one time in 1989 which was subsequently expunged. Further, the appellant provides an adequate explanation regarding the circumstances of that arrest, which the appointing authority does not dispute. The record also reflects that the appellant was charged with Larceny in 1992 which was dismissed. While the appellant was an adult at the time of his arrests, it is clear that the 1989 charge was an isolated incident since he was not found guilty for any other incidents after that time. In addition, over 20 years has passed since the time of his arrests in 1989 and 1992. The appellant also provides evidence of his rehabilitation, indicating that he is a long term supervisory employee at UMDNJ, and his supervisor provides a letter of recommendation indicating that the appellant is an "asset" to UMDNJ. Thus, based on a review of the record and the totality of the circumstances, including the amount of time that has passed since the appellant's sole conviction in 1989 and the fact that he is now a long term employee at UMDNJ, he has provided enough information to show that he has been rehabilitated. Moreover, the appointing authority does not provide any substantive information to show that the appellant has not been rehabilitated.

The appointing authority also requested the removal of the appellant's name from the subject eligible list for failing to disclose the Unauthorized Use charge on

the employment application. However, the Commission is perplexed regarding that argument since there is no evidence to reflect that the appellant was ever charged with Unauthorized Use. In this regard, the appellant could not have falsified his application since there is no evidence that he was charged with that offense. Thus, since the record does not reflect that the appellant was charged with Unauthorized Use, the appointing authority has failed to establish that the appellant falsified his employment application. Therefore, it appears that the appellant adequately completed his employment application and disclosed relevant information for the appointing authority's review. Moreover, the appointing authority does not provide any arguments that it did not have the opportunity to investigate the appellant's background or provide any substantive information to show that his name should be removed from the eligible list.

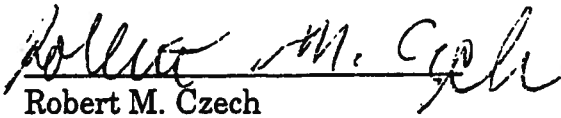
Accordingly, given the position at issue and in consideration of the totality of the circumstances, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections.

### ORDER

Therefore, it is ordered that this appeal be granted and the list for Correction Officer Recruit (S9987M), Department of Corrections 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 4<sup>th</sup> DAY OF DECEMBER, 2013



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
& Regulatory Affairs  
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Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

**Attachment**

c: Eddie Acosta  
Erik C. Acosta, Esq.  
James Mulholland  
Kenneth Connolly



Chris Christie  
*Governor*  
Kim Guadagno  
*Lt. Governor*

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
Division of Classification & Personnel Management  
P. O. Box 313  
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Robert M. Czech  
*Chair/Chief Executive Officer*

January 24, 2013

Eddie Acosta

**Title Correction Officer Recruit**

**Symbol: S9987M**

**Jurisdiction: Department of Corrections**

**Certification Number: JU11M1**

**Certification Date: 06/10/2011**

**Initial Determination: Removal – Unsatisfactory Criminal Record**

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C.4A:4-4.7(a) 4 which permits the removal of an eligible candidate's name from the eligible list for unsatisfactory criminal history.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

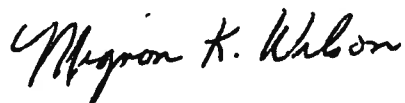
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulator Affairs (ARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to MSPLR. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Eddie Acosta  
Page 2

Henry Maurer, Director  
Appeals and Regulator Affairs  
Written Record Appeals Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Assistant Director, Joe Hill Jr.

A handwritten signature in cursive script, reading "Mignon K. Wilson".

Mignon K. Wilson  
Human Resource Consultant

c: Judith A Lang, Director Dept. of Corrections

