

B-14



**STATE OF NEW JERSEY**

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

In the Matter of Tashana Watkins,  
Police Officer (S9999R), Irvington

CSC Docket No. 2017-315

List Removal Appeal

**ISSUED: JAN 24 2017**

(CSM)

Tashana Watkins appeals the removal of her name from the eligible list for Police Officer (S9999R), Irvington on the basis of an unsatisfactory background report.

The appellant's name appeared on the subject list that expires on May 1, 2017. On February 24, 2015, the appellant's name was certified (OL150246) in the 66<sup>th</sup> position. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that she had an unsatisfactory background report. Specifically, the appointing authority found that the appellant failed to disclose in her questionnaire booklet that she was charged with simple assault on October 20, 2014 and July 10, 2005, charged with criminal mischief on July 29, 2005 and May 5, 1997 (as a juvenile), and charged with harassment on September 26, 2005 and September 22, 2015. The appointing authority also indicated that the appellant was rejected by the Essex County Department of Corrections in 2010 for omitting prior arrests and the Irvington Police Department for omitting prior arrests and residences. Further, the appointing authority indicated that the appellant received discipline when she was in the military for fighting with an employee and sleeping on duty.

On appeal to the Civil Service Commission (Commission), the appellant states that her background contains two arrests that occurred ten years ago in 2006 which she included on her initial application. Further, she notes that these charges were dismissed, one after completing Pre-Trial Intervention (PTI). The appellant emphasizes that she has never been convicted of any crime and has been a Security Officer and Police Aide for over nine years with the same appointing authority and

had to provide the same information concerning her two arrests. Further, the appellant states that she served in the United States Air Force for four years as a Police Officer.

In response, the appointing authority reiterated its previous reasons for requesting the removal of the appellant's name from the list. In support, the appointing authority provides copies of the appellant's application and her arrest history as documented in the New Jersey Automated Complaint System Complaint Inquiry

### CONCLUSION

*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 removal of 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.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 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, firefighter or correction officer and other titles as determined by the Commission. 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).

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). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a municipal police department, when requested for purposes of making a hiring decision. However, 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. Accordingly, the disability arising under N.J.A.C. 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal. However, it is noted that although it is clear that the appellant was never convicted of a crime, she has been arrested on several occasions and charged with criminal offenses. 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. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). As such, the all of the appellant's arrests can be considered.

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 removal of an eligible's name from an employment 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:4-6.3(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.

In the matter at hand, the record evidences that the appellant has been arrested or has had multiple adverse contacts with law enforcement either as a juvenile or an adult from 1997 to 2015. Although the appellant states that she was never convicted of any crimes since she completed PTI in 2006, she neglects the fact that she was been charged on multiple occasions with criminal mischief, simple assault and harassment. Further, while she completed PTI in 2006 for the charges of stalking and threatening to commit a crime, 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. In *Grill, supra*, the Appellate Division indicated that the PTI 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, as stated earlier 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 her name from the subject eligible list. *Compare, In the Matter of Harold Cohrs* (MSB, decided May 5, 2004).


Additionally, the appellant failed to indicate on her questionnaire that she was charged with simple assault on October 20, 2014 and July 10, 2005, charged with criminal mischief on July 29, 2005 and May 5, 1997, and charged with harassment on September 26, 2005 and September 22, 2015. The information that the appellant failed to disclose is considered material and should have been accurately indicated on her employment application. The Appellate Division of the New Jersey Superior Court in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. In this regard, it is recognized that municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). The public expects Police Officers to present a personal background that exhibits respect for the law and rules. The appellant's failure to disclose this information is indicative of the appellant's lack of integrity and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Police Officer. Further, the appointing authority noted that the appellant's application indicated that she had been disciplined on two occasions while serving as a Police Officer in the military and was rejected for appointment consideration by two other law enforcement agencies. Accordingly, given the totality of the circumstances, the appointing authority has presented sufficient cause to remove the appellant's name from the Police Officer (S9999R) 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 18<sup>th</sup> DAY OF JANUARY, 2017



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Tashana Watkins  
Musa Malik  
Kelly Glenn