



B-29

STATE OF NEW JERSEY

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

In the Matter of Wendy Landus,
Correction Officer Recruit (S9988R),
Department of Corrections

CSC Docket No. 2016-2616

Request for Reconsideration

ISSUED: July 5, 2017 (CSM)

Wendy Landus, represented by Joel Seltzer, Esq., requests reconsideration of the attached decision rendered on December 16, 2016 which upheld the determination of the Division of Agency Services (Agency Services) removing her name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, on the basis of an unsatisfactory criminal record.

By way of background, the appellant took the open competitive examination for Correction Officer Recruit (S9988R),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 23, 2013. 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. Specifically, the appellant was charged with 2C:30-11B(1) – Shoplifting/Taking Merchandise without intent to pay, which was conditionally amended to 2C:33-2A(1) – Improper Behavior/Disorderly Conduct, to which the appellant plead guilty on October 1, 2010. The appellant appealed to Agency Services, which found that the appointing authority had sufficiently supported its request to remove her name from the list. The appellant appealed Agency Services' determination to the Civil Service Commission (Commission), which found that even though her record was expunged in July 2013,² she petitioned for expungement two months after the list was certified in May 2013. Therefore, given

¹ The Correction Officer Recruit (S9988R) eligible list expired on July 3, 2015.

² It is noted that prior decision inadvertently indicated that the appellant was granted an expungement.

that her adverse encounter with law enforcement occurred three years prior to the list being certified and the fact that she was 36 years old at the time of the incident, the Commission determined that the appointing authority presented a valid basis to remove her name from the list.

On reconsideration, the appellant provides a copy of the Order of Expungement in her case indicating that her record was expunged on May 15, 2017. Therefore, the appellant requests to be restored to the subject list.

In response, the appointing authority states that the appellant has not provided any new additional information or demonstrate a clear material error in the prior decision. Therefore, it maintains that it properly removed her from the subject list.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. 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.

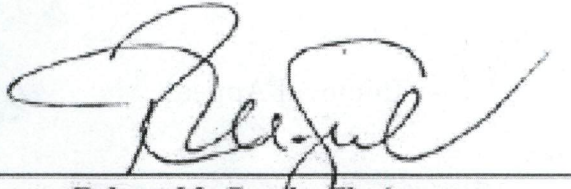
In the instant matter, the appellant has not met the standard for reconsideration. The fact that the appellant's record was fully expunged on May 15, 2017 does not evidence that the appointing authority improperly requested the removal of her name for an unsatisfactory criminal record in May 2013. As stated in the prior decision, her adverse encounter with law enforcement occurred approximately three years prior to the list being certified and she was 36 years old at the time of the incident. Therefore, considering her age at the time of the incident and the fact that it occurred approximately three years prior to her being considered for the position, the appellant's negative encounter with law enforcement adversely relates to the position of Correction Officer Recruit. This adverse interaction with law enforcement, as an adult, demonstrates that at minimum she lacks the judgment necessary for a law enforcement position. In this regard, it is recognized that a Correction Officer Recruit is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction Officers, like 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 Correction Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's name was properly removed from the list.

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 21st DAY OF JJUNE, 2017



Robert M. Czedz, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Joel Seltzer
Wendy Landus
Elizabeth Whitlock
Kelly Glenn



STATE OF NEW JERSEY

In the Matter of Wendy Landus,
Correction Officer Recruit (S9988R),
Department of Corrections

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

CSC Docket No. 2015-2630

List Removal Appeal

ISSUED: DEC 17 2015 (CSM)

Wendy Landus appeals the attached determination of the Division of Agency Services (Agency Services) upholding the removal of her name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 23, 2013. 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. Specifically, the appellant was charged with 2C:30-11B(1) – Shoplifting/Taking Merchandise without intent to pay, which was conditionally amended to 2C:33-2A(1) – Improper Behavior/Disorderly Conduct, to which the appellant plead guilty on October 1, 2010. The appellant appealed to Agency Services which found that the appointing authority had sufficiently supported its request to remove her name from the list.

On appeal, the appellant presents that in 2010, she was involved in an abusive relationship and out of anger one day she went into a store and put two watches in her purse. The appellant states that she was caught in the act and the police were called who pressed charges. When she went to court, the charges were

¹ It is noted that the Correction Officer Recruit (S9988R) eligible list expired on July 3, 2015.

downgraded to a disorderly persons offense. The appellant states that she takes full responsibility for her actions and provides letters from her husband, a friend, and her church attesting to her dedication and leadership abilities. In a supplemental submission, the appellant provides evidence that the charges against her were expunged in July 2013.

In response, the appointing authority presents that the appellant was 36 years old when she was charged with shoplifting and this evidences her disregard for the law as an adult. Therefore, while her record was expunged in July 2013, the appointing authority argues that the appellant has demonstrated behavior as an adult that is inconsistent with the standards expected of a law enforcement officer. Consequently, the appointing authority maintains that the appellant is not a suitable candidate.

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.

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 Civil Service Commission or designee may determine. 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).

In the instant matter, the appointing authority has presented a valid basis to remove the appellant's name from the subject list. The appellant, at age 36, was charged with shoplifting on March 1, 2010, arrested, but the charges were downgraded to improper behavior. Although the appellant's record was expunged in July 2013, this occurred two months after the list was certified in May 2013.

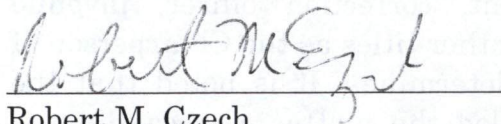
Moreover, her adverse encounter with law enforcement occurred approximately three years prior to the list being certified and she was 36 years old at the time of the incident. Therefore, considering her age at the time of the incident and the fact that it occurred approximately three years prior to her being considered for the position, the appellant's negative encounter with law enforcement adversely relates to the position of Correction Officer Recruit. This adverse interaction with law enforcement, as an adult, demonstrates that at minimum she lacks the judgment necessary for a law enforcement position. In this regard, it is recognized that a Correction Officer Recruit is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction Officers, like 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 Correction Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant has not met her burden of proof in this matter and the appointing authority has shown sufficient cause for removing her name from the Correction Officer Recruit (S9988R) 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 16th DAY OF DECEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Wendy Landus
James Mulholland
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
Division of Agency Services
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

March 18, 2015

Wendy E. Landus

Title: Correction Officer Recruit

Symbol: S9988R

Jurisdiction: Department of Corrections

Certification Number: JU13D01

Certification Date: 05/23/2013

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 Regulatory Affairs (DARA) 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 DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

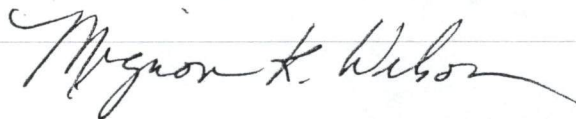
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, 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:

Wendy E. Landus

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

Sincerely,
For the State Certifications Supervisor, Wilma Rodriguez

A handwritten signature in cursive script, reading "Mignon K. Wilson". The signature is written in dark ink and is positioned above the printed name and title.

Mignon K. Wilson
Human Resource Consultant

Henry M. ...

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For the ...

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