



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Felix Rivas, Jr.,
Police Officer (S9999R), City of
Newark

List Removal Appeal

CSC Docket No. 2016-3013

ISSUED: **JUN 09 2017** (ABR)

Felix Rivas, Jr. appeals his removal from the Police Officer (S9999R), City of Newark (Newark) eligible list on the basis of an unsatisfactory criminal background and falsification of his application.

The appellant took the open competitive examination for Police Officer (S9999R), Newark, which had a closing date of September 4, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The subject eligible list promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified to the appointing authority on August 27, 2015.

In disposing of the certification,¹ the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal background and falsification of his Background Investigation Questionnaire (Questionnaire). The appointing authority asserted that the appellant, at age 25, was arrested following an August 19, 2014 incident in Belleville Township and charged with several offenses under the New Jersey Code of Criminal Justice. The appointing authority indicated that after the arrest, the appellant was admitted to the Conditional Dismissal Program in September 2014, received a one year conditional discharge for the underlying charges and paid a \$336.00 fine.² Furthermore, the appointing

¹ The appointing authority returned the subject certification to this agency in December 2015 and the disposition was recorded on February 10, 2016.

² Pursuant to *N.J.S.A. 2C:43-13.1, et seq.*, a defendant who is charged with certain petty disorderly persons offenses or disorderly persons offenses may apply for entry into the Conditional Dismissal Program. To be eligible, a defendant must not have a prior conviction for a petty disorderly persons

authority asserted that the appellant falsified his Questionnaire by failing to report four tickets for motor vehicle law violations, including: improper safety glass in violation of *N.J.S.A. 39:3-75* in May 2012, fictitious plates in violation of *N.J.S.A. 39:3-33* in July 2014, failure to obey a traffic signal in violation of *N.J.S.A. 39:4-81* in October 2011, and failure to wear seat belt in violation of *N.J.S.A. 39:3-76.2F* in July 2009. In support of its request, the appointing authority furnished a copy of its Candidate Background Investigation Report (Background Report) for the appellant dated October 23, 2015, which included a Complaint Narrative Inquiry from the New Jersey Automated Complaint System regarding the August 19, 2014 charges.

On appeal, the appellant submits a copy of a Final Order of Expungement issued by the Essex County Superior Court dated June 16, 2016, which ordered the expungement of the records connected to his August 19, 2014 arrest.

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, submits copies of the appellant's Background Report and Questionnaire, including an attachment where the appellant explained the underlying August 2014 incident. In that attachment, the appellant maintained that he was with a friend in Belleville Township when they were approached by police and arrested.

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 prohibits an appointing authority from rejecting an eligible based on such criminal

offense, disorderly persons offense or a crime. Additionally, the defendant must not have previously participated in the Conditional Dismissal Program, Conditional Discharge Program or the Pre-Trial Intervention Program. If a defendant is admitted to the Conditional Dismissal Program, the charges against him or her are conditionally dismissed and he or she is placed under a probationary monitoring status for a period of one year. At the end of the conditional dismissal term, if the defendant fulfills the conditions of the program, the court may terminate the probationary monitoring and dismiss the proceedings against the defendant. Pursuant to *N.J.S.A. 2C:52-6*, a defendant may apply for expungement of the arrest six months the entry of the order of dismissal.

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. 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). The Appellate Division has held that when candidates for law enforcement titles, including the title of Police Officer, present an expungement, the foundation for that expungement is treated as "[t]he equivalent of 'evidence of rehabilitation' in these circumstances." See *In re J.B.*, 386 *N.J. Super.* 512 (App Div. 2006). *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 this matter, a review of the record demonstrates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list based upon the appellant's criminal history. At the outset, it is noted that at the time the appointing authority requested the appellant's removal from the subject eligible list in December 2015, the record of the August 2014 incident had not yet been expunged. Furthermore, even if the record of that incident had been expunged from the appellant's record at the time, the presentation of an expungement would not preclude his removal from an eligible list for the title of Police Officer on the basis of that arrest. Instead, it would be considered the equivalent of evidence of rehabilitation in weighing the criteria provided under *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4*. Although the expunged arrest appears to be the only incident in the appellant's criminal history, the nature of the arrest, the appellant's age when it occurred and its relatively recent timing are problematic. A review of the record reveals that the nature of the underlying incident surrounding the arrest was serious. Furthermore, the appellant was 25 years old at the time of his arrest. Moreover, the arrest was relatively recent, occurring in August 2014, nearly one year after the closing date for the subject examination. Finally, as noted above, when the appointing authority requested the appellant's removal from the subject eligible list, the record of the appellant's August 2014 arrest had not yet been expunged. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a municipal Police Office is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the

respect of the public. *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). Clearly, the appellant's criminal history reflects poorly upon his ability to enforce and promote adherence to the law.

Accordingly, the appellant's criminal history provides a sufficient basis to remove his name from the subject eligible list. It is, therefore, unnecessary to determine whether the appointing authority's remaining allegation concerning the appellant's falsification of his application would also support his removal from the subject 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 7TH DAY OF JUNE, 2017

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