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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Lamarr Smith,
County Correction Officer (S9999R),
Union County

List Removal Appeal

CSC Docket No. 2017-2366

ISSUED: SEP 21 2017 (HS)

Lamarr Smith appeals the removal of his name from the eligible list for County Correction Officer (S9999R), Union County on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open competitive examination for County Correction Officer (S9999R), which had a closing date of September 4, 2013. The resulting eligible list promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified to the appointing authority on May 2, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was arrested and charged with unlawful possession of a weapon (handgun) in violation of *N.J.S.A. 2C:39-5(b)* on January 17, 2015, which was dismissed.

On appeal to the Civil Service Commission (Commission), the appellant states that he has no criminal convictions and the arrest in question occurred while he was working as an armed security guard. In support, the appellant submits a copy of his State of New Jersey Permit to Carry a Handgun, which was valid from February 2, 2015 to February 2, 2017.

In response, the appointing authority states that its background investigation revealed that the narrative on the warrant describing the January 17, 2015 incident stated that the appellant was in possession of a handgun without first obtaining the proper permit. The investigation also revealed that the appellant was

arrested on October 14, 2013 and charged with offenses under the New Jersey Code of Criminal Justice, including a gun-related offense, which were dismissed. The appointing authority found that the appellant showed disregard for the rules concerning firearm possession.

The appointing authority adds that the appellant's driving record was reviewed and also found to be adverse to the position sought. Specifically, there were 14 instances from 2009 to 2015 in which the appellant failed to appear in court to answer for traffic summonses. Of these summonses, the appellant pled guilty to 11 violations, including failure to observe traffic control device, obstructing passage of other vehicles, obstruction of windshield for vision, failure to wear seatbelt, no stopping or standing, and several parking violations. In support, the appointing authority submits documentation from the New Jersey Automated Complaint System and the New Jersey Automated Traffic System.

In reply, the appellant states that he was a proud employee at his former security company from August 2011, when he was 22 years old, until January 2015, when he was 26 years old. He states that he worked mostly in small housing communities and apartment buildings and enjoyed the love and respect he received from residents. The appellant states that despite his arrests, his former supervisor has agreed to serve as a reference. He notes that he is a firm believer of painful lessons being some of the best lessons and that the lessons learned from those incidents will stay with him for the rest of his life. The appellant asserts that he remains a legal gun owner who values the privilege of gun ownership. As to his traffic summonses, the appellant states that he was not aware at the time that such matters could be used against him. In support, the appellant submits a letter from the State Police evidencing the expungement of his October 14, 2013 arrest.

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 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).

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. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). *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 name from an eligible list was in error.

A review of the record indicates that the appointing authority's request to remove the appellant's name from the subject eligible list based on his arrest history was justified. Initially, it is noted that the appellant has presented some evidence of rehabilitation, namely the expungement of his October 14, 2013 arrest. The foundation for an expungement is the equivalent of evidence of rehabilitation. See *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006). However, this evidence of rehabilitation cannot outweigh the seriousness of the arrests, the appellant's age at the time of the arrests, and the recent timing of the arrests. In this regard, the arrests resulted in serious charges. The appellant was an adult at the time of both arrests. The October 14, 2013 arrest occurred after the closing date for the subject examination, and the January 17, 2015 arrest occurred during the life of the subject eligible list. Further, this case does not present a matter of an isolated arrest. Moreover, an expungement does not prohibit the removal of an eligible's name from an eligible list for a correction officer title. See *N.J.A.C.* 4A:4-4.7(a)4ii. In addition, the appellant's driving record reflects numerous recent violations, several of which occurred during the life of the eligible list. As such, the

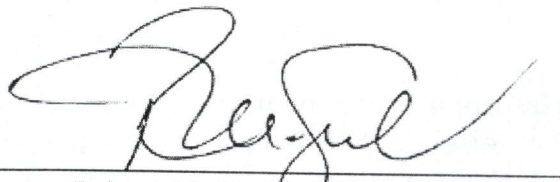
appellant's driving record revealed a persistent disregard for the motor vehicle laws, behavior that is incompatible with the duties of a law enforcement officer. See *Joy, supra*. Such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a County Correction Officer. It is recognized that a County Correction Officer 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 the 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 prison guards to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's arrest and driving records provide sufficient bases to remove the appellant's name 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 20TH DAY OF SEPTEMBER, 2017



Robert M. Czech, 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. Lamarr Smith
Michael M. Yuska
Kelly Glenn