



**STATE OF NEW JERSEY**

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

In the Matter of G.T., Police Officer  
(S9999U), Borough of Roselle

List Removal Appeal

CSC Docket No. 2018-569

**ISSUED: JUNE 25, 2018** (ABR)

G.T. appeals his removal from the Police Officer (S9999U), Borough of Roselle (Roselle) eligible list on the basis of an unsatisfactory criminal background.

The appellant took the open competitive examination for Police Officer (S9999U), Roselle, which had a closing date of August 31, 2016, achieved a passing score and was ranked as a veteran on the subsequent eligible list. The subject eligible list promulgated on March 29, 2017 and expires on March 30, 2019. The appellant's name was certified to the appointing authority on March 30, 2017. In disposing of the certification on August 10, 2017, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal background. In support, it submitted a criminal history report which indicated that the appellant was arrested on August 16, 2008 and charged with aggravated assault in violation of *N.J.S.A. 2C:12-1B*, possession of a weapon with an unlawful purpose in violation of *N.J.S.A. 2C:39-4*, unlawful possession of weapons in violation of *N.J.S.A. 2C:39-5* and making terroristic threats in violation of *N.J.S.A. 2C:12-3A*. Following that arrest, the appellant was convicted of possession of an imitation firearm for unlawful purposes, in violation of *N.J.S.A. 2C:39-4E*, a felony, and the remaining charges were dismissed. The criminal history report also stated that the appellant was arrested on July 10, 2012 and charged with simple assault involving domestic violence, in violation of *N.J.S.A. 2C:12-1A*. That charge was dismissed on May 15, 2013.

On appeal, the appellant asserts that his name should be restored to the subject eligible list because the records of his August 16, 2008 and July 10, 2012

arrests and his felony conviction based upon his August 16, 2008 arrest were expunged. He submits a copy of a July 26, 2017 Order of Expungement<sup>1</sup> from the Superior Court, Law Division, Union County. The appellant cites his military record, including three deployments, and the disabled veterans preference he established in March 2017 in further support of his appeal. He provides a copy of a Notification of Veterans Status from this agency, dated March 31, 2017, as evidence of his disabled veteran status.

In response, the appointing authority asserts that the Order of Expungement was not sent to it before it received the appellant's appeal in this matter. Nevertheless, it contends that the appellant's presentation of his expungement and his military record do not present a sufficient basis to restore his name to the subject eligible list, because he does not detail the underlying circumstances for each arrest and he does not provide sufficient evidence of his rehabilitation. In this regard, it maintains that the record demonstrates that it was appropriate to remove the appellant's name from the subject eligible list because his August 2008 and July 2012 arrests were serious incidents that involved charges which were similar in nature. Specifically, it notes that the appellant's August 2008 arrest was based upon third and fourth degree felony charges and culminated in a fourth degree felony conviction, while his July 2012 arrest involved a domestic violence allegation. It submits that the appellant's disorderly conduct conviction based upon a July 2006 incident also reflects poorly upon his ability to serve as a Police Officer. However, it states that it considers that conviction to be less significant than his 2008 and 2012 arrests. Furthermore, it observes that the appellant was an adult at the time of both arrests, being 20 years old when he was arrested in August 2008 arrest and 24 years old when he was arrested in July 2012. Finally, the appointing authority maintains that the appellant's felony conviction and pattern of arrests as an adult, while serving in the Army National Guard, shows a pattern of disregard for the law and questionable judgment which is unacceptable for an individual for an individual seeking a position as a Police Officer.

## 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;

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<sup>1</sup> It is noted that the Superior Court denied the appellant's request to expunge a July 4, 2006 charge and conviction for a municipal disorderly conduct violation (*N.J.S.A.* 2C:33-2a(1)) because of his subsequent conviction for an indictable offense.

- 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 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, there is no evidence in the record that the appellant notified the appointing authority about the July 27, 2017 Order of Expungement prior to its request to remove the appellant's name from the subject eligible list in August 2017 or at any time prior to the filing of his appeal in this matter. As such, the appointing authority had no knowledge of the appellant's expungement and no ability to weigh it when evaluating the appellant's suitability for a Police Officer position prior to disposing of the subject certification. Regardless, even if the appellant had timely presented the expungement to the appointing authority, it would not preclude the appointing authority from removing his name from the subject eligible list on the basis of his criminal history. Instead, it would have been considered the equivalent of evidence of rehabilitation to be weighed as part of the appointing authority's review of his criminal history pursuant to *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4*. A review of the record reveals that the nature of the underlying incidents surrounding the arrests were serious, as both the 2008 and 2012 arrests involved assault charges, the 2012 arrest included allegations of domestic violence and the 2008 arrest culminated in the appellant's felony conviction for unlawful possession of a weapon. Additionally, the appellant was 20 years old at the time of his 2008 arrest and 24 years old at the time of his 2012 arrest. Furthermore, the August 2012 arrest was relatively recent, occurring approximately four years before the closing date for the

subject examination. Moreover, it is noted that the Order of Expungement did not expunge his conviction for disorderly conduct based on a July 2006 incident. Although that conviction in isolation would not necessarily support the appellant's removal from the subject eligible list, its presence in the record with a subsequent pattern of arrests raises serious questions about the appellant's ability to meet the high standards expected for Police Officers serving in a paramilitary setting, particularly since his subsequent arrests occurred during a recent period of service in a military branch. In this regard, 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 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 Officer 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.

### 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 20<sup>TH</sup> DAY OF JUNE, 2018



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