



**STATE OF NEW JERSEY**

In the Matter of Priscilla Guzman,  
Correctional Police Officer (S9999U),  
Department of Corrections

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

CSC Docket No. 2020-482

List Removal Appeal

**ISSUED: NOVEMBER 21, 2019 (SLK)**

Priscilla Guzman appeals her removal from the eligible list for Correctional Police Officer (S9999U), Department of Corrections based on an unsatisfactory criminal record and falsification.

The appellant took the open competitive examination for Correctional Police Officer (S9999U), which had an August 31, 2016 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking her removal, the appointing authority indicated that in 2006, the appellant was charged with possession of a weapon for unlawful purpose, a third-degree crime, and unlawful possession of a weapon – other, a fourth-degree crime. These charges were disposed of through a Juvenile Referee. Additionally, the appellant failed to disclose the charges on her employment application.

On appeal, the appellant states that she did not disclose these charges because the officer on duty advised that the charges would be expunged when she was 18. She presents that she is now 27. The appellant indicates that she did not know these charges would still be shown on her file and her failure to disclose these charges was a miscommunication.

In response, the appointing authority presents that its criteria for removal includes failure to disclose charges that occurred as a juvenile and have been dismissed by a diversionary program and/or expunged.

## 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 (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).

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 was arrested. 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).

Participation in a juvenile diversionary 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 diversionary 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, 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 juvenile diversionary program could still be properly considered in removing her name from the subject eligible list.

*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 Commission to remove 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.

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.

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. See *In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In this matter, the appointing authority had a valid reason for removing the appellant's name from the list. In this regard, while the appellant's criminal record is quite old and, by itself, would not generally support her removal from the list, she failed to disclose the juvenile charges from the 2006 incident. The appellant explains that she omitted the charges because she was advised that the charges would be automatically expunged when she was 18 and she did not realize that the charges would still show up in her file. However, a review of question 46 on the employment application indicates that the appointing authority requested all charges, including juvenile charges and charges that have been expunged. Therefore, the Commission's finds the appellant's argument unpersuasive. Further, even if the appellant had no

intent to deceive, at minimum, the appointing authority needed this information to have a complete understanding of her negative interactions with the law in order to properly evaluate her candidacy. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). It is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officer, like 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 Correctional Police Officers to present a personal background that exhibits respect for the law and rules.

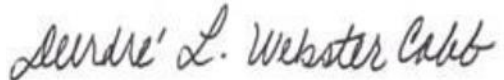
Accordingly, the appellant has not met her burden of proof in this matter and the appointing authority has shown sufficient cause for removing her name from the Correctional Police Officer (S9999U), Department of Corrections eligible list.

### 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 19<sup>th</sup> DAY OF NOVEMBER, 2019



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