



STATE OF NEW JERSEY

In the Matter of Jennifer Martinez,
Correctional Police Officer (S9988A),
Department of Corrections

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

CSC Docket No. 2020-612

List Removal Appeal

ISSUED: NOVEMBER 21, 2019 (SLK)

Jennifer Martinez appeals her removal from the eligible list for Correctional Police Officer (S9988A), Department of Corrections based on an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988A), which had a January 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking her removal, the appointing authority indicated that the appellant was charged with forgery, conspiracy and prescription drugs/distribution and pled guilty to third-degree forgery, which led her to entering a pre-trial intervention (PTI) program for 12 months. The complaint indicated that the appellant, while working in a doctor's office in August 2016, forged the doctor's signature and completed a prescription blank that authorized pain medication for others who had the intent to distribute.

On appeal, the appellant acknowledges the charges, the forgery conviction, and her entering a PTI program as described above. She highlights that, in March 2018, after successfully completing the PTI program, the charges were dismissed. Further, the appellant emphasizes that she was granted an expungement in October 2018.

In response, the appointing authority presents that the appellant's expungement does not negate that she was guilty of a fourth degree or higher crime, which is one of its criteria for removal.

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).

Participation in the PTI 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 PTI 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 PTI program could still be properly considered in removing his or her name from the subject eligible list. Compare *In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

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.

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. Specifically, the appellant, in August 2016, while working for a doctor, forged the doctor's signature so that others could obtain prescription pain medication with the intent to distribute. This is a serious offense which took place when the appellant was 26 years old.¹ Additionally, the appellant offers no explanation for her actions. Further, the appellant's expungement does not preclude the appointing authority from removing the appellant from a law enforcement list, and there has been insufficient time for the appellant to demonstrate rehabilitation as this incident took place less than three years prior to the January 31, 2019 closing date. Moreover, this incident calls in to question the appellant's ability to be a Correctional Police Officer. In this regard, 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.

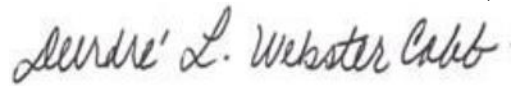
ORDER

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.

¹ The appellant's age is indicated in the employment application.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19th DAY OF NOVEMBER, 2019



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