



STATE OF NEW JERSEY

In the Matter of D.W., Correctional
Police Officer, JJC (S9999U),
Juvenile Justice Commission

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

CSC Docket No. 2019-3594

List Removal Appeal

ISSUED: NOVEMBER 21, 2019 (SLK)

D.W. appeals the removal of her name from the eligible list for Correctional Police Officer, JJC (S9999U), Juvenile Justice Commission, on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer, JJC (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. In seeking her removal, the appointing authority indicated that on April 2, 2002, the appellant was charged with third degree aggravated assault and possession of a weapon, which led to her being adjudicated delinquent and sentenced to house arrest and one year of probation.

On appeal, the appellant explains the circumstances that led to her arrest when she was 13 years old. She notes that she was not convicted of a crime, but was instead adjudicated delinquent with the primary goal to afford her the opportunity to rehabilitate and educate herself rather than punish her. While she acknowledges that she used bad judgment at that time of the juvenile incident, she asserts that she is now a 31-year-old woman who has been rehabilitated. Specifically, the appellant presents that she is a wife and mother of two children, a college graduate, and has been employed as a Laboratory Technologist performing drug testing for agencies such as the Department of Transportation. Additionally, she argues that she is entitled to a retroactive appointment as she believes her removal from the list was unwarranted.

In response, the appointing authority presents that the appellant was removed from the list as conviction or adjudication of a crime of the fourth degree or higher met its automatic criteria for removal.

In reply, the appellant submits documentation to show that her house arrest was only from April 11, 2002 until May 23, 2002, and her application for probation was converted to a deferred disposition, and the complaint was dismissed.

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).

Further, it is well established that the appointing authority 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 law enforcement agency. *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 law enforcement agency, 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. Although it is clear that the appellant was never convicted of a crime,

she has been 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).

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).

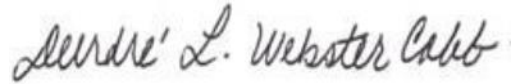
While the Commission is mindful of the high standards that are placed upon law enforcement candidates, a review of the record in this matter indicates that the appellant's removal from the subject eligible list was unwarranted. The record reflects that the appellant was only 13 years old when she was adjudicated delinquent in 2002. This was more than 14 years prior to the subject examination August 31, 2016 closing date. Further, the appointing authority has not presented any other negative interactions with the law. Additionally, the appellant has demonstrated rehabilitation by her possession of a college degree, her employment, and her marriage and children. Accordingly, the appellant has met her burden of proof in this matter and the appointing authority has not shown sufficient cause for removing her name from the (S9999U) eligible list. However, there are no grounds for a retroactive appointment. Individuals whose names merely appear on a list do not have a vested right to appointment. *See In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the Correctional Police Officer, JJC (S9999U), Juvenile Justice Commission eligible list, for prospective employment opportunities only.

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 19th DAY OF NOVEMBER, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: D.W.
Keith Poujol
Kelly Glenn