



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.C., Sheriff's Officer
(S9999U), Hudson County

List Removal Appeal

CSC Docket No. 2019-2027

ISSUED: NOVEMBER 20, 2019 (ABR)

J.C.¹ appeals the removal of his name from the Sheriff's Officer (S9999U), Hudson County eligible list on the basis of an unsatisfactory background report.

The appellant, a non-veteran, applied for and passed the examination for Sheriff's Officer (S9999U), Hudson County which had a closing date of August 31, 2016. The subsequent eligible list promulgated on March 29, 2017 and expires on March 30, 2020. The appellant's name was certified to the appointing authority on June 11, 2018. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background report. Specifically, the appointing authority stated that the appellant was arrested on February 24, 2018 and charged with disorderly conduct, in violation of *N.Y. Penal Law* § 240.20; assault in the third degree, in violation of *N.Y. Penal Law* § 120.00; harassment in the second degree, in violation of *N.Y. Penal Law* § 240.26; aggravated harassment in the second degree, in violation of *N.Y. Penal Law* § 240.30. In May 2018, the appellant pled guilty to disorderly conduct and received a conditional discharge, the terms of which he completed in May 2019.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he is fit for the position of Sheriff's Officer. He acknowledges that he was involved in a "mutual" altercation with another man in February 2018. He states that the other man hit him first, breaking his glasses, and that in response,

¹ Initials are being used because the record indicates that the disorderly conduct violation at issue was sealed after the appellant completed a one-year conditional discharge pursuant to *N.Y. Penal Law* § 65.05.

he acted on instinct and pushed the man away. He maintains that he is not a violent person and that his reaction to the situation was completely out of character. He claims that he pled guilty to the charge of disorderly conduct in order to resolve the case. Nevertheless, he contends that he has a suitable background for the subject position because he has never had any other negative interaction with law enforcement, he was on the Dean's List at and graduated from Rutgers University, he has never been disciplined as a student or as an employee, and he has been commended on his work ethic by his employers. He also states that he passed a psychological examination with another department,² which he maintains proves that he is fit for a position in law enforcement. The appellant also submits two unsigned letters of support and an Appearance History record from the New York State Unified Court System's Case Reporting and Information Management System (CRIMS), which indicates that he successfully completed the one-year period of conditional discharge on May 14, 2019.

In response, the appointing authority submits a copy of the background report and the supporting documentation it relied upon when requesting the removal of the appellant's name from the subject eligible list, including a Fingerprint Response Summary and a Certificate of Disposition which detail the charges against the appellant and their disposition. Despite an opportunity to do so, the appointing authority has not submitted any additional arguments.

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.

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

² Agency records indicate that the appellant's name was also certified to Hudson County from the County Correction Officer (S9999U) eligible list on September 11, 2018 (Certification No. OL180950). In disposing of the September 11, 2018 certification, the appointing authority appointed the appellant to the title of County Correction Officer, effective January 10, 2019. The appellant subsequently resigned from that position in good standing, effective May 13, 2019.

the position at issue, a person should not be eligible for appointment. *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 the instant matter, the Commission finds that the record supports the removal of the appellant's name from the subject eligible list based upon an unsatisfactory background report. Initially, the fact that the appellant previously passed a psychological examination for another law enforcement position does not preclude a finding that he possesses an unsatisfactory background for the position at issue. Rather, the relevant inquiry in this matter is whether the appointing authority had a sufficient basis to request the removal of the appellant's name from the eligible list for the subject title when it disposed of the certification at issue. Here, a review of the record demonstrates that the appellant's May 2018 plea of guilty to a charge of disorderly conduct did not rise to the level of a crime, as *N.Y. Penal Law* § 240.20 provides that the offense of disorderly conduct is a violation. Nevertheless, this infraction can still be considered in light of the factors noted in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether it adversely relates to the employment sought. The nature of the offense was serious, as it involved a fight on February 24, 2018. Although the incident is the only negative interaction with law enforcement in the record, he was 28 years old at the time. Moreover, the appellant's arrest occurred less than six months prior to the issuance of the subject certification and he did not complete the requirements for his conditional discharge until May 2019. Therefore, the proximity of his arrest to the certification date and the fact that he was still completing the requirements of the conditional discharge at the time he was considered for appointment provided sufficient grounds to remove his name from the Sheriff's Officer (S9999U), Hudson County eligible list. Accordingly, the foregoing demonstrates that the appellant has not met his burden of proof in this matter.

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 19TH DAY OF NOVEMBER, 2019

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Jose Cruz
Frank X. Schillari
Kelly Glenn
Records Center