



STATE OF NEW JERSEY

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

In the Matter of J.W., Correctional
Police Officer (S9988U), Department
of Corrections

List Removal Appeal

CSC Docket No. 2019-2105

ISSUED: DECEMBER 5, 2019 (ABR)

J.W. appeals her removal from the Correctional Police Officer (S9988U), Department of Corrections eligible list on the basis of an unsatisfactory background report.

The appellant, a non-veteran, applied for and passed the open competitive examination for Correctional Police Officer (S9988U), which had a closing date of August 31, 2016. The subject eligible list promulgated on March 30, 2017 and expired on March 29, 2019. The appellant's name was subsequently certified to the appointing authority. The appointing authority requested the removal of the appellant's name from the subject eligible list on the basis of an unsatisfactory background. Specifically, the appointing authority indicated that the appellant, as a juvenile, was charged with *N.J.S.A. 2C:39-5E(2)*, unlawful possession of a weapon in an educational institution, based upon an October 24, 2008 incident, and adjudicated delinquent in January 2009.

On appeal to the Civil Service Commission (Commission), the appellant states that she made the poor choice of bringing a knife in her bag with the intent of returning it to its original owner. She states that she subsequently completed community service and she has not had any other major incidents in the 10 years since that time. She submits that she has not had any gaps in her employment since 2009 and that she completed a Master's Degree in Criminal Justice in December 2018. She further indicates that she is in the process of seeking to have her record expunged. The appellant submits a copy of her Master's degree.

In response, the appointing authority asserts that the appellant's name was properly removed from the subject eligible list, based upon its internal criteria. Specifically, it states that unlawful possession of a weapon in an educational institution is a crime of the fourth degree and that under its criteria, a conviction for an offense that is a crime of the fourth degree or higher is a basis for removal from the subject eligible list. The appointing authority asserts that it is unable to ascertain the level and extent of the appellant's rehabilitation based upon her "vague description" of the incident and the information she has presented on appeal. Accordingly, it argues that there is no basis to restore the appellant's name to the subject eligible list. The appointing authority submits a copy of the appellant's pre-employment application and records from the Family Automated Case Tracking System related to her juvenile proceedings.

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.

Further, 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). *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. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant's juvenile arrest record was properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision.

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 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 appointing authority argues that its criteria that a conviction for the crime of the fourth degree supports the removal of the appellant's name from the subject eligible list. However, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). Here, while the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter indicates that the appellant's removal from the subject eligible list is unwarranted. Although the appointing authority argues that it is unable to evaluate the extent of the appellant's rehabilitation because she gave a vague description of the incident and her rehabilitation on appeal, the Commission finds that there is sufficient information in the record to evaluate her record 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. In this regard, the record reflects that the appellant was only 17 years old when she was adjudicated delinquent on the 2009 charge. The appellant's only arrest occurred approximately nine years before the closing date for the examination and the record reflects that the appellant had no other negative interactions with law enforcement. Moreover, the appellant has indicated rehabilitation. Specifically, she notes that she has worked continuously since 2009 and that she completed a Master's Degree in Criminal Justice in December 2018. Accordingly, the foregoing demonstrates that the appellant has met her burden of proof in this matter and the appointing authority has not shown sufficient grounds to remove the appellant's name from the eligible list for Correctional Police Officer (S9988U), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted and the list for Correctional Police Officer (S9988U), Department of Corrections be revived in order for the appellant to be considered for appointment at the time of the next certification 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 4TH DAY OF DECEMBER, 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: J.W.
Lisa Gaffney
Kelly Glenn