



STATE OF NEW JERSEY

In the Matter of F.E.U., Correctional
Police Officer (S9988A), Department
of Corrections

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

CSC Docket No. 2020-819

List Removal Appeal

ISSUED: DECEMBER 20, 2019 (SLK)

F.E.U. appeals his removal from the eligible list for Correctional Police Officer (S9988A), Department of Corrections, on the basis of an unsatisfactory criminal record and background report.

By way of background, 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, which expires on June 26, 2021. On September 3, 2019, the Department of Corrections (Corrections) sent a notice to the appellant indicating this his name had been removed from the list for an unsatisfactory criminal record and background report. Specifically, it indicated that the appellant was charged in 2005 with third degree terroristic threats and fourth degree prohibited weapons and devices, which were adjudicated delinquent and he received one year of probation. In February 2008, he was charged with third degree simple assault and criminal trespass, both disorderly persons offenses, and was adjudicated guilty of the simple assault charge and given an order of no contact with the victims. In March 2008, he was charged with fourth degree contempt for violation of a domestic violence order and adjudicated guilty and given one year of probation. In February 2010, the appellant was charged with two counts of third degree aggravated assault on law enforcement and third degree resisting arrest, which led to him being adjudicated delinquent on two charges and confined to the Middlesex County Juvenile Detention Center for 60 days and given one year of probation. In June 2010, he was charged with fourth degree criminal

trespass-research facility/power plant and was adjudicated delinquent and given one year of probation.

On appeal, the appellant acknowledges his juvenile record, but highlights that these charges are now almost 10 years old. The appellant explains that he had an abusive stepfather and was homeless when he was 14. Still, he accepts that he made poor choices as a juvenile. The appellant highlights that despite his juvenile record, he had good grades and standardized test scores, rarely missed school and was loved by both peers and professors. The appellant states that his initial goal was to enter the Navy for nuclear engineering. However, although he met with a recruiter and scored well on the Navy's test, this did not work out as before he could start, he got in trouble. Thereafter, he presents that he began working at ShopRite doing food preparation and, at age 18, he became a manager within a year. Thereafter, the appellant states he started as a Loader and became the Auction Manager for Bodnar's Auction, running New Jersey's largest auction and selling over 5,000 lots in a day. Today, he indicates he entered the solar energy field and was promoted to Foreman in less than a year, leading a multi-million-dollar project in South Brunswick. He states that he recently applied to work in the military, but was denied due to his background. The appellant presents that he is now 27 years old and wants to serve and be a role model for his daughters. He highlights that he has not been in trouble with the law since 2010. Additionally, he indicates that he has been working towards an Associate's degree in Criminal Justice and currently holds a perfect 4.0 GPA. The appellant believes he scored well on the subject Civil Service test and he has been preparing for the Academy by running four miles a day.

In response, the appointing authority presents that its criteria for removal includes conviction of any offense which is fourth degree or higher, including juvenile offenses.

In reply, the appellant reiterates his earlier arguments and asserts that he is an example of the juvenile justice system working properly as he has been able to rehabilitate his life.

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.

It is well established that the appointing authority may maintain records pertaining to juveniles, 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 records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision. Although it is clear that the appellant was never convicted of a crime, a juvenile record may warrant removal of an eligible's name where the juvenile record 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:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Civil Service Commission (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.

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 the instant matter, the appellant was charged with numerous juvenile offenses. While the Commission is aware of the high standards for a Correctional Police Officer, a law enforcement title, these incidents took place while the appellant was a minor. Further, the last incident was in June 2010, over eight years prior to the January 31, 2019 closing date. Additionally, the appellant has demonstrated sufficient rehabilitation as he is a father, gainfully employed, and successfully attending college. Therefore, the Commission finds that the appellant cannot be removed from the subject list for an unsatisfactory criminal record and background report.

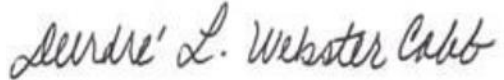
Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the Correctional Police Officer (S9988A), Department of Corrections eligible list, for prospective employment opportunities only.

ORDER

Therefore, it is ordered that this appeal be granted.

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 18th DAY OF DECEMBER, 2019



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