



STATE OF NEW JERSEY

In the Matter of Kevin Albrechcinski,
Correctional Police Officer (S9988A),
Department of Corrections

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

CSC Docket No. 2020-892

List Removal Appeal

ISSUED: DECEMBER 20, 2019 (SLK)

Kevin Albrechcinski appeals the removal of his name from the eligible list for Correctional Police Officer (S9988A), Department of Corrections, on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988A), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that in 2011, the appellant was charged with possession of marijuana and the charge was disposed of through a juvenile referee. Thereafter, in 2014, the appellant was again charged with possession of marijuana and he entered a one-year conditional discharge program.

On appeal, the appellant presents that the possession of marijuana charges have either been dismissed or expunged. He asserts that based on the appointing authority's website, neither charge is grounds for automatic disqualification. The appellant states that these incidents, which occurred over five years ago, do not represent who he is today. He encloses his last two performance evaluations from the Navy, where he received the highest evaluation possible. Further, the appellant submits his positive evaluation from his civilian employer. Additionally, he notes that he has Active Secret Department of Defense clearance.

In reply, the appointing authority states that its criteria for removal is clear. While it agrees that one possession of marijuana charge would not be an automatic

ground for removal, the appellant committed the same crime twice within the seven years prior to the promulgated eligible list. Further, the charges were only dismissed after the conditions of the programs were met. It notes that as a law enforcement agency, it can consider expunged records for a position in law enforcement.

CONCLUSION

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Civil Service Commission (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). Moreover, there are no provisions in Civil Service law or rules that provide for the “automatic” removal of an eligible from a list.

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 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. However, it is clear that the appellant was 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.

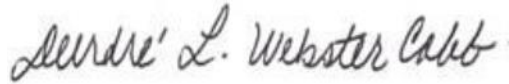
While the Commission is mindful of the high standards that are placed upon law enforcement candidates, a review of the record in this matter indicates that the appellant’s removal from the subject eligible list was unwarranted. A review of the appellant’s employment application reflects that he was only 17 and 20 years old at the time he committed the possession of marijuana offenses. Further, the last incident occurred in March 2014, which is almost five years prior to the January 31, 2019 closing date for the subject examination. Moreover, the appointing authority has not presented any other evidence of the appellant’s negative interactions with the law. Conversely, the appellant has demonstrated rehabilitation by his employment in the Navy and the private sector. Finally, while the appellant’s name will be placed back on the eligible list for future consideration, he will still be subject to an updated background check regarding any future employment opportunities. Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient cause for removing his name from the (S9988A) eligible list.

ORDER

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.

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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