



**STATE OF NEW JERSEY**

In the Matter of Wayne Hampton,  
County Correctional Officer  
(S9999U), Essex County, Police  
Officer (S9999U), City of East  
Orange, Police Officer (S9999U),  
City of Orange Township

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

List Removal Appeals

CSC Docket Nos. 2019-2735, *et. al.*

**ISSUED: JANUARY 17, 2020 (JET)**

Wayne Hampton appeals the removals of his name from the County Correction Officer (S9999U), Essex County, eligible list on the basis of an unsatisfactory background report, and from the Police Officer (S9999U), City of East Orange, and Police Officer (S9999U), City of Orange Township (Orange Township) eligible lists on the basis of an unsatisfactory driving record. Since these appeals concern similar issues, they have been consolidated herein.

The appellant took the Law Enforcement Examination (LEE) (S9999U),<sup>1</sup> achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on July 26, 2018 for County Correction Officer in Essex County (OL180780), on September 12, 2018 for Police Officer in East Orange (OL180959), and on September 26, 2018 for Police Officer in Orange Township (OL181011).

In disposing of OL180780, Essex County requested the removal of the appellant’s name from the eligible list on the basis of an unsatisfactory background report. Specifically, Essex County asserted that on September 2, 2014 in Belmar, the appellant was charged with Improper Behavior in violation of *N.J.S.A. 2C:33-2A(1)*, which was downgraded to Noise/Fireworks infraction in violation of ordinance 16-3.1, and with Defiant Trespass in violation of *N.J.S.A. 2C:18-3B(1)*, and fined \$756; on August 13, 2015 in Belleville, was charged with Simple Assault in violation of *N.J.S.A. 2C:12-1A*;<sup>2</sup> on September 4, 2015 in Denville, was charged

<sup>1</sup> It is noted that the S9999U list promulgated on July 23, 2015 and expired on July 22, 2017.

<sup>2</sup> The appellant was ordered to complete Batter’s counseling sessions in 2016.

Contempt-Violating Domestic Violence Order in violation of *N.J.S.A. 2C:29-9B*, and paid \$250 bail; and on September 16, 2015 in Denville, the appellant was charged with Contempt-Violating Domestic Violence Order in violation of *N.J.S.A. 2C:29-9B* (dismissed) and with Harassment – Communication in a Manner to Cause Alarm in violation of *N.J.S.A. 2C:33-4A* (dismissed). Essex County also indicated that on December 11, 2015 in Denville, the appellant was charged with Contempt – Violating Domestic Violence in violation of *N.J.S.A. 2C:29-9B*, which according to the case history was gang related; and as a juvenile on January 16, 2008 in Belleville, was charged with Robbery in violation of *N.J.S.A. 2C:15-1*, which was amended to Conspiracy Theft in violation of *N.J.S.A. 2C:5-2*.

In disposing of OL180959, East Orange requested the removal of the appellant's name on the basis of an unsatisfactory driving record. Specifically, East Orange provided the appellant's driving history which reflects four moving violations within the last five years; a DUI near school property; and Careless Driving and Obstruction of Traffic on January 6, 2018, which resulted in the driver's license suspensions.<sup>3</sup>

In disposing of OL181011, Orange Township requested the removal of the appellant's name on the basis of an unsatisfactory driving record. Specifically, Orange Township provided the appellant's driving history which indicates that, on May 2, 2018 and on January 6, 2018, the appellant was charged with Operating Under the Influence of Liquor/Drugs. Additionally, it indicates that his driver's license was suspended from May 1, 2018 to July 30, 2018, and his commercial driver's license was suspended from May 1, 2018 to July 30, 2018.

On appeal to the Civil Service Commission (Commission), the appellant acknowledges that he was found guilty of the above noted DUI driving infractions. The appellant explains that his driving abstract reflects the dates he was arrested and pleaded guilty. The appellant states that he accepted a plea bargain for the DUI matters. The appellant adds that he hopes that such infractions are not frowned upon or mistaken for two DUI violations. Additionally, the appellant maintains that he possesses sufficient qualities for appointment as a Police Officer, including good character, leadership, professionalism, and competence. The appellant explains that over a year has passed since he pleaded guilty to the DUI infraction and his lawyer informed him that the infraction would not adversely affect his opportunity to become a Police Officer. The appellant asserts that he has learned from his mistakes since the time the infractions occurred, and he maintains it is his dream to serve as a Police Officer. Moreover, the appellant asserts that he does not possess a criminal record and he is unaware of any charges pending against him. The appellant states that the charges against him were dismissed. The appellant adds that he requested a copy of his criminal record and he should

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<sup>3</sup> Additionally, East Orange essentially noted the same criminal history as indicated by Essex County.

receive it within a few weeks. The appellant explains that he can provide proof that he does not have a criminal record. In support, the appellant provides an unofficial copy of his driving abstract to show that his driving privileges have been restored. He also provides an October 7, 2015 Order which dismissed the Temporary Restraining Order (TRO) against him. He also provides two December 21, 2015 Contempt of Court Orders indicating that the matters were dismissed.

In response, Essex County provides documentation with respect to the appellant's criminal background, and East Orange and Orange Township provide documentation with respect to the appellant's driving history, including his driving abstract. The appointing authorities do not provide any additional arguments in response to the appellant's appeal.

### CONCLUSION

*N.J.S.A.* 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)(4), provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. *See Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relate to the position of County Correction Officer. 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, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment 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, supra.* In *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal to the former Merit System Board (Board) for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that

“[t]he equivalent of ‘evidence of rehabilitation’ is supplied in these circumstances by the foundation for an expungement. *See N.J.S.A. 2C:52-3 and N.J.S.A. 2C:52-8.*

Further, it is well established that municipal police departments may maintain record 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 records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision.

Moreover, pursuant to *N.J.S.A. 2C:36A-1*, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. *See State v. Marzolf*, 79 *N.J.* 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant’s personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant’s arrest and Conditional Discharge could still properly be considered in removing his name from the subject eligible list.

*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. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998); *In the Matter of Yolanda Colson, Correction Officer Recruit (S9999A), Department of Corrections*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003).

In this matter, a review of the record reflects that in September 2014, the appellant was charged with Improper Behavior, which was downgraded to a Noise/Fireworks

infraction; charged with Defiant Trespass and fined \$756; in August 2015 charged with Simple Assault; in September 2015 with Contempt-Violating Domestic Violence Order (dismissed); and with Contempt-Violating Domestic Violence Order and with Harassment – Communication in a Manner to Cause Alarm (dismissed). Additionally, the record reflects that, in December 2015, the appellant was charged with Contempt – Violating Domestic Violence, which was gang related; and as a juvenile on January 16, 2008, the appellant was charged with Robbery, which was amended to Conspiracy Theft. Although the appellant argues that some of the charges against him were dismissed, he has not provided any information or evidence to show that he was not arrested or charged with the aforementioned incidents, and he has not explained his involvement with the incidents or provided any evidence of his rehabilitation. It cannot be ignored that the appellant was arrested in the same year that he applied to take the subject examination, and less than three years prior to when his name was certified on the lists. As such, not enough time has elapsed to show that he has been rehabilitated. Additionally, the employment application clearly notified candidates that their names could be removed as a result of an unsatisfactory criminal record. Moreover, the appellant’s background reflects a domestic violence incident that was gang related. In this regard, the Commission has previously removed law enforcement candidates from eligible lists for their involvement in gang related activity. *See in the Matter of D.S., Department of Corrections* (CSC, decided November 19, 2019).

Additionally, the appellant’s ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Police Officer. These violations evidence disregard for the motor vehicle laws and the exercise of poor judgment. The appellant has offered no substantive explanation for these infractions. In this matter, it is clear that the appellant’s driving record shows a pattern of disregard for the law and questionable judgment on the appellant’s part. Such qualities are unacceptable for an individual seeking a position as a municipal Police Officer. The appellant’s motor vehicle history reflects that, on May 2, 2018 and on January 6, 2018, the appellant was charged with Operating Under the Influence of Liquor/Drugs. It also indicates that his driver’s license was suspended from May 1, 2018 to July 30, 2018, and his commercial driver’s license was suspended from May 1, 2018 to July 30, 2018. The appellant does not provide any substantive evidence on appeal to dispute this information, and the incidents occurred less than one year prior to when his name was certified on the eligible lists. Such infractions reflect a disregard for the motor vehicle laws and rules, which is unacceptable for a candidate applying for a law enforcement position. Given the recency of such driving infractions and subsequent suspensions of his driver’s license, there is sufficient cause to remove the appellant’s name from the lists for Police Officer (S9999U).

The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correction Officers and Police Officers to present a personal background that exhibits respect for the law and rules. In this regard, it is recognized that Police Officers and County Correction Officers are law enforcement employees who must help keep order in the State prisons, promote adherence to the law, and maintain the safety of the general population. Correction Officers and municipal Police Officers hold highly visible and sensitive positions within the community

and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Accordingly, the appointing authorities have presented sufficient cause to remove the appellant's name from the eligible list for County Correction Officer (S9999U), Essex County, and from the eligible lists for Police Officer (S9999U), City of East Orange, and Police Officer (S9999U), City of Orange Township.

### ORDER

Therefore, it is ordered that these appeals 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 15<sup>th</sup> DAY OF JANUARY, 2020



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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c: Wayne Hampton (2019-2735; 3256; 3259)  
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