



**STATE OF NEW JERSEY**

In the Matter of Derek Bailey,  
Correctional Police Officer (S9999U),  
Department of Corrections

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

CSC Docket No. 2019-1667

List Removal Appeal

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

Derek Bailey appeals the removal of his name from the Correctional Police Officer (S9999U), Department of Corrections eligible list on the basis of an unsatisfactory driving record.

The appellant took the open competitive examination for Correctional Police Officer (S9999U),<sup>1</sup> achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on May 1, 2018. In disposing of the certification, the appointing authority initially requested the removal of the appellant’s name from the eligible list on the basis of unsatisfactory criminal record. Specifically, the appointing authority asserted that in 2014, the appellant was charged as a juvenile and found guilty of Possession of a Controlled Dangerous Substance (CDS) - Marijuana in violation of *N.J.S.A. 2C:35-10A(4)* (dismissed), which was disposed of by way of a diversionary program. The appointing authority also removed the appellant’s name on the basis of an unsatisfactory driving record. Specifically, the appointing authority asserted that the appellant’s driving record reflects that he failed to appear in court three times within seven years of the date he applied for the subject examination. In this regard, the appellant’s driving abstract reflects that he failed to appear in court on October 31, 2015, August 17, 2015 and March 5, 2011. Additionally, the appointing authority removed the appellant’s name on the basis of falsification of the employment application. Specifically, the appointing authority indicated that the appellant failed to disclose the charges as noted above on the employment application.

<sup>1</sup> It is noted that the S9999U list expired on March 30, 2019.

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that he was not involved in the 2014 charges as alleged by the appointing authority. He maintains that an individual with a similar name was charged for that incident. Moreover, the appellant maintains that, since he was not arrested in 2014 with respect to the charges as noted above, his name should be restored to the list.

In response, the appointing authority clarifies that it erroneously determined that the appellant was arrested in 2014. It clarifies that the appellant was not charged with the above noted incident, as he was not a juvenile in 2014. The appointing authority adds that, although the individual who was charged shares the same name as the appellant, that individual has a different birthday. However, the appointing authority maintains that the appellant's name should be removed on the basis of his driving record which reflects that he failed to appear in court on three occasions within seven years of the date he applied for the subject examination. In this regard, the appointing authority argues that its pre-employment processing criteria with respect to applicant driving records required that the appellant's name be removed from the list.

## CONCLUSION

*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. 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).

*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 this matter, the issues of the appellant's criminal record and falsification of his application are moot as the appointing authority confirms on appeal that it erroneously determined that he was arrested and charged with the 2014 incident. Nonetheless, the appointing authority maintains that the appellant's driving record reveals that he failed to appear in court on three occasions within seven years of applying for the subject examination, and as such, it properly removed the appellant from the list. The Commission is 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 Victor Rodriguez* (MSB, decided July 27, 2005). *See also, In the Matter of Debra Dygon* (MSB, decided May 23, 2000). In this matter, although the record reflects that the last incident occurred in 2015, the appellant has not been involved with any further motor vehicle infractions since that time. While the appellant has not explained the circumstances underlying his failures to appear in court, his driving record is otherwise clean. Given that the remainder of his driving record is very remote in time and the fact that the last incident occurred in 2015, such information is not an impediment to his ability to perform the duties of a Correctional Police Officer. Accordingly, under the circumstances, the appointing authority has not demonstrated that the appellant's driving record constitutes sufficient cause to remove his name from the subject eligible list.

### ORDER

Therefore, it is ordered that this appeal be granted and that the list for Correctional Police Officer (S9999U), Department of Corrections be revived, and the appellant's name certified 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 15<sup>th</sup> DAY OF JANUARY, 2020



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