



**STATE OF NEW JERSEY**

In the Matter of Mark Harmon,  
Correctional Police Officer (S9988A),  
Department of Corrections

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

CSC Docket No. 2020-935

List Removal Appeal

**ISSUED: JANUARY 31, 2020 (JET)**

Mark Harmon, represented by William G. Blaney, Esq., appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list 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. The appellant's name was certified on July 4, 2019. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list. Specifically, the appointing authority asserted that on February 27, 2012, the appellant was charged in Caldwell with Possession of Less than 50 Grams 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 conditional discharge. The appointing authority also indicated that on September 12, 2013, the appellant was charged in North Wildwood with Possession of Less than 50 Grams of a CDS - Marijuana - in violation of *N.J.S.A. 2C:35-10A(4)*, for which he was found guilty and paid a fine of \$1,205. The appointing authority further indicated that on May 8, 2015, the appellant was arrested in Woodbine and charged with Possession of Less than 50 Grams of a CDS - Marijuana - in violation of *N.J.S.A. 2C:35-10A(4)* (dismissed) and with Use/Possession with Intent to Use (dismissed) in violation of *N.J.S.A. 2C:36-2*, which was downgraded to a local ordinance violation.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he has never been arrested or convicted of an indictable offense.

Rather, the incidents are considered Disorderly Persons Offenses. The appellant explains that, at the time of the 2012 and 2013 incidents, he was only 19 and 20 years old. In this regard, he contends that his interactions with marijuana consisted of youthful experimentation, and he was not charged with distribution of such substances. The appellant states that over six years have passed since the last incident occurred, and his last involvement with the courts occurred in 2015. As such, a sufficient passage of time has elapsed to show that he has been rehabilitated, which is consistent with the Commission's reasoning in *In the Matter of Anthony Lewis* (CSC, decided March 6, 2019) (Commission found that, while the appellant in that matter was removed from the subject list due to possession of marijuana charge, with the further passage of time and absent additional charges, there would no longer be a basis to disqualify the appellant on future eligible lists).

The appellant contends that he completed 12 weeks of counseling at a recovery treatment program and he stopped using marijuana. He adds that he possesses a Bachelor's degree in Liberal Arts, is a graduate of Stockton University, and volunteers at a local community nursing home where his father also works. The appellant asserts that, as a part of the appointing authority's pre-employment processing requirements, he was subjected to a drug test which he believes he did not fail. The appellant states that he now understands that marijuana use is incompatible with his career goals to become a law enforcement officer, and he is pursuing an application to expunge his record with respect to the 2012 and 2013 incidents. Additionally, the appellant argues that medical marijuana use was legalized in this State, and in 2018, the Attorney General's Office ceased prosecuting marijuana cases for a brief period of time due to expected decriminalization of marijuana. The appellant states that, while such information is not an excuse for his prior behavior, due to the fact that marijuana might soon be decriminalized in this State, his prior infractions should not be used to disqualify him from the subject list.

In response, the appointing authority asserts that it has discretion to remove candidates when their record includes a conviction of a disorderly persons offense within seven years of their name appearing on the list, which applies to the appellant in this case. The appointing authority contends that the charges against the appellant cannot be considered as an isolated event, as he was charged with the aforementioned infractions in 2012, 2013 and 2015. The appointing authority explains that law enforcement candidates must be able to follow the rules in order to ensure a safe and secure environment, and the appellant's background is inconsistent with those standards. Moreover, the appointing authority asserts that its goals are to select candidates who exhibit respect for the law in order to effectively manage the day-to-day operations of a prison system.

## 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 Correctional Police 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*.

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.

Additionally, *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 an appointment.

In this matter, it is clear that the appellant's offenses adversely relate to the employment sought. The record indicates that the appellant was arrested in 2012, 2013 and 2015 for the same offenses, namely, possession of less than 50 grams of marijuana. As such, the charges are not considered an isolated incident. Although the appellant has provided some information to show that he has been rehabilitated, and explains that he has not been charged with any other incidents, such explanations are not sufficient to explain his involvement in the incidents. It cannot be ignored that the last incident occurred less than four years prior to the closing date of the examination and the date his name was certified on list. As such, not enough time elapsed to show that he has been rehabilitated. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correctional Police Officers, like 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 authority has presented sufficient cause to remove his name from the eligible list for Correctional Police Officer (S9988A). However, as consistent with *Lewis, supra*, the removal in this matter does not prevent the appellant from applying for any similar positions in the future, and, given the nature of his background, evidence of continued rehabilitation and the further passage of time, such a background will be insufficient to remove him from a future similar list.

### **ORDER**

Therefore, it is ordered that this appeal 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 29<sup>th</sup> DAY OF JANUARY, 2020



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