



STATE OF NEW JERSEY

In the Matter of Kenneth
Monteleone, Correctional Police
Officer (S9988A), Department of
Corrections

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

CSC Docket No. 2021-32

List Removal Appeal

ISSUED: OCTOBER 23, 2020 (JET)

Kenneth Monteleone appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list on the basis of an unsatisfactory background report.

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 to the appointing authority on November 27, 2019. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory background report. Specifically, the appointing authority asserted that in 2012, the appellant was arrested and charged with Possession of a Controlled Dangerous Substance (CDS) in violation of *N.J.S.A. 2C:35-10(4)*, which was downgraded to Failure to Give CDS to Police in violation of *N.J.S.A. 2C:35-10(c)*. It is noted that the appellant received a conditional discharge in 2013.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he made a mistake at the time the infraction occurred, as he was influenced by his friends with whom he no longer associates. The appellant contends that it is his dream to become a law enforcement officer as his father served in that capacity. Moreover, the appellant states that, if he is provided the opportunity, he would serve

as a Correctional Police Officer with honor and integrity. The appellant provides a letter of recommendation in support of his appeal.¹

In response, the appointing authority maintains that the appellant's removal was appropriate, as he was charged with Failure to Give CDS to Police and, as a result, he entered into a conditional discharge which was completed in 2013. As such, the appointing authority maintains that the recency of the incident was sufficient to remove the appellant from the list.²

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.*

¹ This letter is from the appellant's father, a retired Hudson County Correctional Police Lieutenant.

² The appointing authority also attaches the appellant's employment application which indicates, among other things, that the appellant held several full and part-time positions from 2011 through the closing date of the examination. No issues regarding this employment was noted.

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.

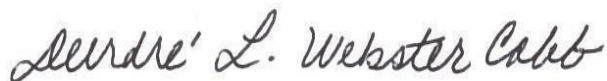
In this matter, the record indicates that the appellant was arrested in 2012 and received a conditional discharge. Additionally, the record reflects that he has not been charged with any other incidents since that time. Initially, the Commission is not bound by criteria utilized by the appointing authority 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). Further, the 2012 incident and subsequent 2013 conditional discharge was an isolated incident that occurred nearly seven years prior to the certification of the appellant's name. While the charges against the appellant were serious, given the amount of time that has passed, and the appellant's employment history listed on his employment application, there is sufficient evidence that the appellant has been rehabilitated. Accordingly, the Commission finds that the appellant has satisfied his burden of proof.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the 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 21ST DAY OF OCTOBER 2020



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