



STATE OF NEW JERSEY

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

In the Matter of Dawaine Whetstone,
Correctional Police Officer (S9988U),
Department of Corrections

List Removal Appeal

CSC Docket No. 2019-1834

ISSUED: MARCH 16, 2020 (ABR)

Dawaine Whetstone appeals his removal from the Correctional Police Officer (S9988U), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, applied for and passed the open competitive examination for Correctional Police Officer (S9988U), which had a closing date of August 31, 2016. The subject eligible list promulgated on March 30, 2017 and expired on March 29, 2019. The appellant's name was certified from the subject eligible list. The appointing authority removed the appellant's name from the subject eligible list on the basis of an unsatisfactory criminal background. Specifically, the appointing authority stated that the appellant was incarcerated for six days in the Atlantic County Justice Facility after he was convicted for speeding in violation of *N.J.S.A. 39:4-98* in February 2008.

On appeal to the Civil Service Commission (Commission), the appellant argues that the record does not support the removal of his name from the eligible list on the basis of an unsatisfactory criminal background. In this regard, he maintains that he was found guilty of a motor vehicle violation rather than a criminal offense. In addition, he submits that his sentence for speeding in 2008 was to assist with trash collection for six days, not incarceration. The appellant submits documentation from the Township of Hamilton Regional Municipal Court (Atlantic County) which shows that he was found to be driving 106 miles-per-hour in a 65 mile-per-hour zone and that he was required to report for six days to a day

reporting center and pay \$439 in fines and fees after he was found guilty of speeding.

In response, the appointing authority states that a review of the New Jersey County Correction Information System (CCIS) indicates that the appellant was sentenced to serve six days with in day reporting program, meaning that for each day of his sentence, he was required to report to the Atlantic County Justice Facility for confinement and/or work for several hours, but would be discharged from the facility at night. Nevertheless, the appointing authority asserts that the appellant's background and sentence demonstrate that, based upon its criteria, he is not a suitable candidate for a Correctional Police Officer position and that his name was appropriately removed from the subject eligible list.

It is noted that the appellant, in his pre-employment application, indicates that after the incident at issue, he was found guilty of three motor vehicle law violations based upon incidents involving exceeding the speed limit by five miles per hour in April 2008; parking in a handicapped parking space in October 2008 and making an improper turn at a traffic light in 2009. The appellant also stated that he graduated from Rowan University with a Bachelor's degree in Criminal Justice in May 2010 and that he has maintained employment since March 2007.

CONCLUSION

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.

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. *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 the instant matter, although the appointing authority has cited its internal criteria as a basis for removing the appellant's name from the subject eligible list, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). Furthermore, it is noted that a conviction for violation of *N.J.S.A. 39:4-98* does not rise to the level of a crime, as *N.J.S.A. 39:4-104* provides that a person who violates *N.J.S.A. 39:4-98*, is subject to a fine of not less than \$50 or more than \$200, or imprisonment exceeding 15 days, or both, while *N.J.S.A. 2C:1-4a* defines a "crime" as an offense for which a sentence of imprisonment in excess of six months is authorized by the New Jersey Code of Criminal Justice or other statute.

The Appellate Division has recognized that although a conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, such a conviction may be considered as a background factor relevant to a determination of fitness under *N.J.A.C. 4A:4-6.1(a)9*. *See In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App Div. November 7, 2002) (Appellate Division affirmed the consideration of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Similar to a disorderly persons offense, the appellant's conviction for a violation of *N.J.S.A. 39:4-98* can still be considered in light of the factors noted in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine whether it adversely relates to the employment sought. Here, the municipal court documentation the appellant submits from his February 2008 violation indicates that the appellant exceeded a highway speed limit by 41 miles-per-hour, but that he did not cause any injuries. The appellant was 23 years old at the time of the incident. Although the appellant's record indicates that he had three other driving infractions after this incident, the last infraction for making an improper turn at a traffic light occurred in 2009. Furthermore, Commission notes that the appellant does not appear to have any other negative interactions with law enforcement after 2009. Finally, the Commission finds that the record demonstrates the appellant's rehabilitation, including evidence that he has maintained employment in the more than 10 years that have passed since his last infraction in 2009 and that he completed a Bachelor's degree in May 2010. Accordingly, the foregoing demonstrates that the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient grounds to remove the appellant's name from the eligible list for Correctional Police Officer (S9988U), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted and the list for Correctional Police Officer (S9988U), Department of Corrections be revived in order

for the appellant to be considered for appointment 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 12TH DAY OF MARCH, 2020



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