



STATE OF NEW JERSEY

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

In the Matter of L.T., Correctional
Police Officer (S9988A), Department
of Corrections

List Removal Appeal

CSC Docket No. 2020-1736

ISSUED: JUNE 19, 2020 (HS)

L.T. appeals the removal of his name from the eligible list for Correctional Police Officer¹ (S9988A), Department of Corrections on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open-competitive examination for Correctional Police Officer (S9988A), which had a closing date of January 31, 2019. The resulting eligible list promulgated on June 27, 2019 and expires on June 26, 2021. The appointing authority requested the removal of the appellant’s name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was charged on November 9, 2015 with marijuana possession in violation of *N.J.S.A. 2C:35-10a(4)*, a disorderly persons offense, and sentenced on February 29, 2016. The appellant received a conditional discharge, completed a 12-month diversion program, and was assessed \$755. In a letter dated August 21, 2019, the appointing authority informed the appellant of the removal of his name from the list.

In his appeal to the Civil Service Commission (Commission), postmarked December 26, 2019, the appellant states that he was informed of the removal of his name on August 21, 2019. The appellant points to New Jersey Senate Bill 4154 (*P.L. 2019, c. 269*) and states that this legislation provided for the sealing of low-level marijuana convictions upon disposition of a case. The appellant acknowledges that

¹ Pursuant to *N.J.S.A. 11A:2-11.1*, effective May 1, 2018, the title of Correction Officer Recruit has been retitled to Correctional Police Officer.

he was found guilty and received a conditional discharge but believes that he will be seen as a fine candidate if permitted to appear in person before the Commission and the appointing authority to engage in an oral debate.

In response, the appointing authority indicates that it stands with its original decision to remove the appellant's name from the eligible list. In support, the appointing authority submits a copy of the appellant's preemployment application and court disposition information for the appellant's charge.

In reply, the appellant states that in 2015, he was young and not very mindful of the things or people around him. He states that he has learned from his mistake and has matured.

CONCLUSION

Initially, Civil Service regulations provide that a list removal appeal shall be filed within 20 days of notice of the action, decision or situation being appealed. *See N.J.A.C. 4A:4-4.7(d), N.J.A.C. 4A:4-6.3(a)3 and N.J.A.C. 4A:4-6.6(a)1.* The appellant acknowledges being informed of the removal of his name on August 21, 2019, yet the instant appeal was not filed until December 26, 2019, over four months later. Thus, the appeal would appear to be untimely. Nevertheless, even assuming this appeal is timely, there is no basis for relief, as discussed below.

The Commission construes the appellant's request to be permitted to engage in an oral debate in person before the Commission and the appointing authority as a request for a hearing. However, list removal appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b.* Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d).* For the reasons explained below, no material issue of disputed fact has been presented that would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978).*

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 that includes a conviction for a crime that 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.

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, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. Additionally, pursuant to *N.J.S.A. 11A:4-10*, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible 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*, 261 *N.J. Super.* 401 (App. Div. 1992).

Additionally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that an eligible was involved in such activity may reflect upon the eligible's character and ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here, as the appellant was arrested for a disorderly persons offense, the offense did not rise to the level of a crime. Nevertheless, the appellant's arrest could 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 related to the employment sought.

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 persons 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 conditional discharge could still be properly 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. *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 name from an eligible list was in error.

In *In the Matter of L.T.* (CSC, decided October 23, 2019), the Commission upheld the removal of the appellant's name from the eligible list for Correctional Police Officer (S9988V), Department of Corrections. There, the Commission found that the appointing authority's decision to remove the appellant's name from the eligible list based on his arrest for marijuana possession was justified. In doing so, the Commission noted that the charge was resolved via a conditional discharge, and the arrest occurred less than two years before the examination closing date when the appellant was an adult. In this case, and for similar reasons, the Commission again finds the appointing authority's decision justified. Completion of a conditional discharge program has not been construed to constitute a favorable termination. Moreover, the appellant's arrest occurred approximately three years and three months before the examination closing date, still a relatively short period of time. As such, the Commission is not persuaded that at this juncture, a sufficient amount of time has passed to establish rehabilitation. The Commission notes 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 the 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). The public expects prison guards to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's arrest for marijuana possession provides a sufficient basis to remove his name from the subject eligible list.

The Commission adds the following comments. The appellant has highlighted *P.L. 2019, c. 269* and states that this act provided for the sealing of low-level marijuana convictions upon disposition of a case. The Commission presumes that the appellant is referencing the system for sealing records from the public described, in pertinent part, as follows in section six of the act:

No later than three months after the effective date of this section, [June 15, 2020,] the Administrative Office of the Courts shall develop and maintain a system for sealing records from the public, upon order of a court, pertaining to offenses or delinquent acts involving marijuana or hashish as described in this section. Once the system is developed, unless otherwise provided by law, a court shall order the nondisclosure to the public of the records of the court and probation services, and records of law enforcement agencies with respect to any arrest, conviction, or adjudication of delinquency, and any proceedings related thereto, upon disposition of any case *occurring on or after* the development of the system for sealing records that solely includes the following *convictions* or adjudications of delinquency:

. . .

any number of offenses for, or delinquent acts which if committed by an adult would constitute, obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10 (emphases added).

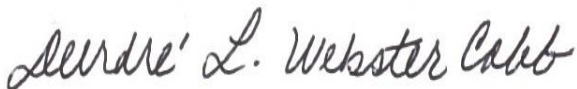
The appellant's charge for marijuana possession in violation of *N.J.S.A. 2C:35-10a(4)* was disposed of well before the effective date of the above section and did not result in his conviction. For at least those reasons, the cited legislation appropriately did not bear on the analysis in this matter.

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
17TH DAY OF JUNE, 2020



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