



**STATE OF NEW JERSEY**

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

In the Matter of B.B., Correctional  
Police Officer (S9988V), Department  
of Corrections

List Removal Appeal

CSC Docket No. 2019-3610

**ISSUED: JULY 2, 2020 (ABR)**

B.B. appeals the removal of his name from the Correctional Police Officer (S9988V), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, applied for and passed the examination for Correctional Police Officer (S9988V), which had a closing date of May 31, 2017. The subject eligible list promulgated on September 28, 2017 and expired on September 27, 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 record. Specifically, the appointing authority indicated that on January 7, 2014, the appellant, at age 18, was charged with possession of a controlled dangerous substance (CDS) (less than 50 grams of marijuana or 5 grams of hashish), in violation of *N.J.S.A. 2C:35-10A*; and use or possession of a CDS with intent to use, in violation of *N.J.S.A. 2C:36-2*. The appointing authority stated that the appellant entered into a diversion program for a term of 12 months and was fined \$675.

On appeal to the Civil Service Commission (Commission), the appellant states that when he was 18 years old, he was a passenger in a vehicle in which the driver stopped to smoke a small quantity of marijuana. He indicates the above-noted charges were brought against him after police later searched the vehicle and found a marijuana grinder inside. He acknowledges that he had small bag with cigar wrappers in his possession on this occasion, but he states that he was unaware that

the driver had a marijuana grinder in the vehicle until police found it. He indicates that he pled guilty to the aforementioned charges in order to be admitted to a conditional discharge program. The appellant submits that the charges were dismissed on December 1, 2014, after he successfully completed the program and paid a \$675 fine. The appellant avers that the totality of his record following his January 2014 arrest demonstrates that he is a suitable candidate for a law enforcement position and that his name should be restored to the subject eligible list. Specifically, the appellant proffers that he has not had any other negative interaction with law enforcement since January 2014 and that he received an Order of Expungement in July 2017, a copy of which he submits on appeal. In addition, the appellant states that he has been employed as a tax clerk since May 2015, and he notes that he is entrusted to handle confidential tax information in that position. Furthermore, he submits that he has held a Security Officer Registration Act (SORA) license since June 2017, worked as a security officer in a busy shopping mall from June 2017 to February 2019 and served as an intern with the Paramus Borough Police Department in 2019. He adds that he has passed all drug tests that he has been subject to in conjunction with his SORA license application, SORA license renewal, security officer employment, and applications to multiple police departments. The appellant further notes that he was granted a license to purchase a firearm by the State of New Jersey in October 2018. Moreover, the appellant states that he enrolled as a student at William Paterson University, serves as the coach of a men's flag football team, as a player/coach of a men's baseball team, and possesses American Red Cross certifications for CPR, first aid and Automated Electronic Defibrillator use.

In response, the appointing authority asserts that the removal of the appellant's name from the subject eligible list was proper in light of his record, particularly given that the offense at issue occurred approximately three years prior to the closing date. In support, it notes that under its internal criteria, a candidate may be removed from the eligible list if they have "been convicted of a disorderly persons or petty disorderly persons offense within seven years of the promulgated civil service list."

In reply, the appellant notes that the instructions to the pre-employment application state that a conviction for "disorderly persons or petty disorderly persons offense within seven years of the promulgated civil service list" is "not an automatic disqualifier." The appellant avers that the appointing authority did not give proper consideration to his rehabilitation in the four years that elapsed between his offense and the submission of his application. In this regard, he observes that the appointing authority does not indicate that it considered factors such as his age, employment, SORA license, community service, education and the fact that he has consistently passed drug tests as a condition of much of his employment in recent years. He asserts that the totality of the record demonstrates that his name should be restored to the subject eligible list.

## 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.

The presentation to an appointing authority of a pardon or expungement prohibits 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. 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). The Appellate Division has held that when candidates for law enforcement titles, including the title of Police Officer, present an expungement, the foundation for that expungement is treated as "[t]he equivalent of 'evidence of rehabilitation' in these circumstances." See *In re J.B.*, 386 *N.J. Super.* 512 (App Div. 2006). *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.

*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.

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 (1969) (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 criminal conviction). Thus, the appellant's arrest and Conditional Discharge could be considered in removing his name from the subject eligible list.

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.<sup>1</sup> *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). While the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter indicates that the appellant's removal from the subject eligible list is unwarranted. The appellant's January 2014 charges for CDS possession and use/possession with an intent to use a CDS were resolved via a Conditional Discharge program, which as noted above, is not considered a conviction, pursuant to *N.J.S.A. 2A:36A-1*. The record does not indicate that the appellant has had any other negative interaction with law enforcement. Moreover, the appellant has demonstrated other evidence of rehabilitation. Specifically, the appellant has been regularly employed in a number of sensitive positions since May 2015, including as a tax clerk, as a security guard and as an intern with the Paramus Borough Police Department. The appellant also obtained SORA and firearm purchase licenses; and Red Cross certifications for CPR, first aid and Automated Electronic Defibrillator use. Furthermore, the appellant enrolled as a student at William Paterson University. Moreover, the appellant obtained an expungement order, and the foundation for an expungement is the equivalent of evidence of rehabilitation. *See In the Matter of J.B.*, 386 N.J. Super. 512 (App. Div. 2006). Accordingly, based on the totality of the record in this matter, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the subject eligible list.

## ORDER

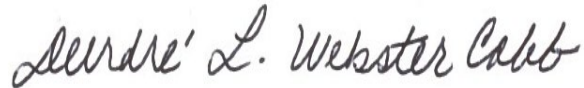
Therefore, it is ordered that this appeal be granted and the Correctional Police Officer (S9988V) eligible list be revived in order for the appellant to be considered for appointment at the time of the next certification for prospective employment opportunities only.

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<sup>1</sup> The Commission further notes that the appellant's Conditional Discharge does not appear to meet the appointing authority's criteria of having been "been convicted of a disorderly persons or petty disorderly persons offense within seven years of the promulgated civil service list," given that, per *N.J.S.A. 2C:36A-1*, a Conditional Discharge is not considered a conviction.

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 1<sup>ST</sup> DAY OF JULY, 2020



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