



**STATE OF NEW JERSEY**

In the Matter of Carmine Lunelli,  
Correctional Police Officer (S9988A),  
Department of Corrections

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

CSC Docket No. 2021-568

List Removal Appeal

**ISSUED: FEBRUARY 5, 2021 (SLK)**

Carmine Lunelli, represented by Giovanna Giampa, Esq., appeals the decision to remove his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list on the basis that he had an unsatisfactory background report.

The appellant took the open competitive examination for Correctional Police Officer (S9988A), Department of Corrections, which had a January 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory background report. Specifically, the background report indicated that on March 4, 2013, the appellant was arrested as part of an undercover surveillance operation where it was discovered that he was in possession of 10 syringe/needles and 600 pills identified as steroids. There was also a small glass vial identified as Sustenone 300, which is a steroid. The appellant admitted that these were not for medical purposes and the appointing authority noted that steroids are a Schedule III drug. The appellant was charged with a third-degree crime for possession, use or being under the influence or failure to make lawful disposition. Additionally, the appellant was charged with possession or distribution of a hypodermic syringe or needle. The appellant was ordered to enter a Pre-Trial Intervention (PTI) program and pay a \$1,175 fine.

Additionally, the background report indicates that in 2002, the appellant was found guilty of underage drinking and paid a fine. Further, in May 2009, he was

arrested for entering the second floor of a motel and attempting to fight an individual. He was charged with disorderly conduct and found guilty of a municipal offense and ordered to pay a \$383 fine. In June 2009, the appellant was found guilty of a municipal offense for fireworks and paid a \$350 fine. In August 2009, he was found guilty of fighting-disorderly conduct and ordered to pay a \$189 fine. In 2012, the appellant was found guilty of simple assault and ordered to pay a \$1,019 fine. In June 2013, he was found guilty of driving under the influence as he had a .14% blood alcohol content after failing the field sobriety test from the charging officer.

On appeal, the appellant states that per the appointing authority's applicant questionnaire hiring information, his background report is insufficient to justify his removal. He presents that the questionnaire indicates that a person may be disqualified if they have two or more convictions for operating a motor vehicle under the influence of drug or alcohol. However, the appellant indicates that he only has one driving under the influence of alcohol charge, which took place in 2013. He notes that his driver's license was suspended, he paid the fines, and then his license was reinstated. The appellant also notes that driving under the influence in New Jersey is only a motor vehicle offence and should be correctly reflected as such in his background report and he has a current valid New Jersey driver's license.

Regarding his criminal history, the appellant states that the questionnaire indicates that an applicant may be disqualified if convicted of a disorderly persons or petty disorderly offense within seven years of the promulgated list. Further, this is not an automatic disqualifier and the application is subject to review to determine eligibility. The appellant presents that he has not had any convictions in the last seven years as his last conviction was in 2012 for simple assault. He notes that the charge was amended to violation of a municipal noise ordinance. Therefore, the appellant states that he was not found guilty of assault. Additionally, the appellant states that the background report incorrectly states that he was found guilty of fighting-disorderly conduct when he pled guilty to a municipal ordinance violation for public nuisance. He asserts that the appointing authority's background report prejudices him as proper wording must be used to describe these offenses and none of these charges should be disqualifiers.

Concerning the third degree controlled dangerous substance charge in 2013, the appellant indicates that he was eligible for PTI as a first-time offender, and on completion, these charges were dismissed. Therefore, he argues that this charge should not be a disqualifying circumstance that would impinge on his ability to be a Correctional Police Officer. Further, while the appointing authority's criteria indicates that an offense that leads to PTI within seven years of the promulgation of the Civil Service list can lead to removal, the criteria indicates that it is not an automatic disqualifier and is subject to additional review to determine eligibility. The appellant reiterates that he was offered PTI because he was a first-time offender and he successfully completed the program. He states that he has not been charged with

a crime since and has expressed remorse for his actions. The appellant acknowledges that he had personal issues between 2009 to 2013. However, he presents that has held employment and has not been charged with a crime since that time. The appellant argues that he is exactly the kind of Correctional Police Officer candidate that the appointing authority should hire as he is a different person than he was many years ago. He asserts that he has turned his life around and deserves a chance to serve.

The appointing authority provides its background report and indicates that it wishes to stand by its original submission as described above. It states that it is clear in its removal criteria regarding criminal and background reports. The appointing authority presents that the appellant has demonstrated a lengthy history of inappropriate behavior, which includes drugs, alcohol and violence and asserts that this behavior is inconsistent with the standards expected of a law enforcement officer.

### 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.

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).

Further, participation in a PTI program is neither a conviction nor an acquittal. See *N.J.S.A.* 2C:43-13(d). See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of

an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his or her name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

*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.

Initially, it is noted that it is the Civil Service Commission (Commission) and not the appointing authority that sets the standard for removal from an eligible list. *See In the Matter of Joseph Hutsebaut* (CSC, decided April 19, 2017) and the Commission is in no way bound by any criteria it may utilize. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In this matter, the record indicates that the appellant had history of negative interactions with the law from 2009 to 2013, including a 2013 charge for steroids. However, while the charges against the appellant were not trivial, these interactions were not so serious as to prevent the appellant from disposing of the steroids charge by successfully completing a PTI program. Further, the record indicates that the appellant's last charge was in June 2013, which was approximately five and one-half years prior to the January 31, 2019 closing date. Additionally, the appellant presents that has held employment and has not been charged with a crime since his last charge, which the appointing authority has not disputed. Therefore, under these circumstances, the Commission finds that the appellant has demonstrated sufficient rehabilitation and his name should be restored to the subject list for prospective employment opportunities only.

Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient cause for removing his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list, eligible list.

### **ORDER**

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the Correctional Police Officer (S9988A), Department of Corrections 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 3<sup>RD</sup> DAY OF FEBRUARY 2021

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
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