



STATE OF NEW JERSEY

In the Matter of Edwidch Seme,
Police Officer (S9999A), Elizabeth
Police

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-759

List Removal Appeal

ISSUED: May 2, 2022 (HS)

Edwidch Seme, represented by Stephen B. Hunter, Esq., appeals the removal of his name from the eligible list for Police Officer (S9999A), Elizabeth Police on the basis of his age.

The appellant, a non-veteran, took and passed the open competitive examination for Police Officer (S9999A), which had a closing date of August 31, 2019. The resulting eligible list promulgated on May 15, 2020 and expires on May 14, 2022. The appellant’s name was certified to the appointing authority on April 15, 2021. In disposing of the certification, the appointing authority requested the removal of the appellant’s name based on his age. Specifically, the appointing authority asserted that the appellant was over 35 years old at the closing date of the examination and had no eligible time to reduce his age.

On appeal to the Civil Service Commission (Commission), the appellant highlights the following experience he possesses:

- Juvenile Detention Officer with Union County from October 2007 to December 2012;
- Correctional Police Officer Apprentice with the New Jersey Department of Corrections from December 2012 to January 2013;
- County Correctional Police Officer with Union County from March 2014 to June 2021; and

- County Correctional Police Officer with Essex County since June 2021.

The appellant maintains that the duties he performed in the above capacities were comparable to the law enforcement duties performed in the positions specifically listed in *N.J.S.A. 40A:14-127.1*. For example, he argues that both correctional police officers and Sheriff's Officers charge and process individuals who disobey the law and that they arrest and detain violent offenders, which parallel certain of the duties of a police officer. The appellant also highlights *N.J.S.A. 40A:14-180.3*, which retitled County Correction Officer to County Correctional Police Officer. The appellant further notes that while there is a 35-year-old age limit for individuals to first *enter* into a municipal police department and be eligible for enrollment in the Police and Firemen's Retirement System (PFRS), he had already accrued 12.5 years of service in PFRS because of prior PFRS-creditable service as a County Correctional Police Officer. Thus, according to the appellant, he should be able to deduct from his actual age the total amount of time he has served in the above-noted capacities, qualifying him for appointment as a Police Officer.

In response, the appointing authority maintains that the duties the appellant performed in the above capacities were not comparable to the law enforcement duties performed in the positions specifically listed in *N.J.S.A. 40A:14-127.1*. It argues that *N.J.S.A. 40A:14-180.3* represented only a title change and that the duties of a County Correctional Police Officer remained separate and distinct and not comparable to other police officer duties. The appointing authority adds that the appellant's current enrollment in PFRS cannot overcome *N.J.S.A. 40A:14-127*, which does not state that a candidate may be appointed as a Police Officer if the person is over the age limit but is currently enrolled in PFRS. Thus, according to the appointing authority, he cannot deduct the time he has served in the previously-noted capacities.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)2*, allows the Commission to remove a candidate's name from a list because the candidate is ineligible by law for employment in that title. *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 the decision to remove his name from an eligible list was in error.

N.J.S.A. 40A:14-127 states, in pertinent part, that no person shall be appointed as a member or officer of the police department or force in any municipality who is over 35 years of age. *N.J.S.A. 40A:14-127* also provides that in any municipality operating under Title 11A (Civil Service), the announced closing date of a Civil Service examination determines the age cut-off deadline. *N.J.S.A. 40A:14-127.1a* provides, in pertinent part, that a former State trooper, sheriff's officer or

deputy, or county or municipal police officer who has separated from service voluntarily or involuntarily, other than by removal for cause on charges of misconduct or delinquency, shall be deemed to meet the maximum age requirement for appointment established by *N.J.S.A. 40A:14-127*, if his actual age, less the number of years of his previous service as a law enforcement officer, would meet the maximum age requirement established by said section. *N.J.A.C. 4A:4-2.3(b)2i* provides that former State troopers, sheriff's officers, sheriff's deputies, County or Municipal Police Officers, New Jersey Transit police officers, Southeastern Pennsylvania Transit Authority police officers, Amtrak police officers, or any persons who were previously employed by any State or Federal law enforcement agency or other public entity, and who performed duties comparable to the law enforcement duties performed in the positions specifically listed in *N.J.S.A. 40A:14-127.1*, 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former law enforcement officers as defined above who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date. *N.J.S.A. 40A:14-127.1b* and *N.J.A.C. 4A:4-2.3(b)2ii* provide that the Commission, may, for good cause shown, deem an individual who is over 35 years of age to meet the maximum age requirement for the purposes of appointment and for purpose of taking a civil service examination even though the individual's separation from current service will not occur except upon a new appointment.

The appellant contends that he performed duties comparable to the law enforcement duties performed in the positions listed in *N.J.S.A. 40A:14-127.1* as a Juvenile Detention Officer, Correctional Police Officer Apprentice, and County Correctional Police Officer. Below, the Commission notes statutory and regulatory provisions pertaining to these titles and their job specifications.

N.J.S.A. 2A:4A-37e(1) provides that the Juvenile Justice Commission (JJC) shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for juvenile detention facilities. Under JJC regulations, a Juvenile Detention Officer is considered a "[c]hild care worker," which means a staff member who provides direct supervision of juveniles during their daily activities for the purpose of ensuring their safety and security. *See N.J.A.C. 13:92-1.2*. Child care workers shall plan, supervise, and participate in all of the juvenile's activities in daily living, including work and recreation. *See N.J.A.C. 13:92-11.29(a)*. The definition section of the job specification for Juvenile Detention Officer states:

Under general direction of a supervisory employee during an assigned tour of duty, controls the general conduct and behavior of juvenile residents, the maintenance of discipline, and custodial, recreational, transportation, and housekeeping functions; does other related duties as required.

FOR POSITIONS ASSIGNED TO PROVIDE MANAGEMENT OF A HOME DETENTION PROGRAM:

Under general direction of a supervisory employee responsible for carrying out the daily operations and maintenance of an electronic monitoring / home detention program for juveniles as well as adult detainees on a 24/7 on-call status.

N.J.A.C. 4A:3-3.7B(a) provides that the purpose of an appointment to Correctional Police Officer Apprentice is to ensure that individuals so appointed shall receive training appropriate to the duties of a Correctional Police Officer in accordance with the Police Training Act. *See N.J.S.A. 52:17B-66, et seq.* The definition section of the job specification for Correctional Police Officer Apprentice states:

Under the immediate supervision of a training officer or other supervisory official in the Department of Corrections, as a student, attends an in-residence course of study for correctional police officers approved by the NJ Police Training Commission at the Corrections Staff Training Academy or other designated approved academy and a non-residential period of on-site training at an assigned correctional facility; performs other related duties as required.

N.J.S.A. 30:8-17 provides that except as otherwise provided, the Sheriff of every county shall have the care, custody, and control of the county jail or jails and all prisoners therein. *N.J.S.A.* 30:8-19 provides that the Board of County Commissioners of any county may assume and thereafter exercise the custody, rule, keeping, and charge of the county jails in their respective counties, and of the prisoners therein. The definition section of the job specification for County Correctional Police Officer states:

Under supervision during an assigned tour of duty within an adult county correctional facility or institution, performs a wide variety of tasks in support of the safety, security, and welfare of inmates, facility personnel, and visitors; performs other related duties as required.

In light of the above-noted provisions and job specifications, the duties performed as a Juvenile Detention Officer, Correctional Police Officer Apprentice, or County Correctional Police Officer are not comparable to the law enforcement duties performed in the positions listed in *N.J.S.A.* 40A:14-127.1. In this regard, Juvenile Detention Officers, Correctional Police Officer Apprentices, and County Correctional Police Officers are concerned, respectively, with supervising the conduct of detained juveniles; receiving *training* in preparation to perform the duties of a Correctional

Police Officer; and securing inmates and others in an adult county correctional facility. Such duties are not comparable to the law enforcement duties performed by State troopers, *see N.J.S.A. 53:1-5 and N.J.S.A. 53:2-1*; Sheriff's Officers, *see N.J.S.A. 40A:9-117.6*; Sheriff's deputies, *see N.J.S.A. 40A:9-117.2*; County Police Officers, *see N.J.S.A. 40A:14-106 and N.J.S.A. 40A:14-107*; or Municipal Police Officers, *see N.J.S.A. 40A:14-118, N.J.S.A. 40A:14-152, and N.J.S.A. 40A:14-152.1*. It is acknowledged that County Correctional Police Officers are "empowered to act as officers for the detection, apprehension, arrest, and conviction of offenders against the law." *See N.J.S.A. 2A:154-3*. However, merely because County Correctional Police Officers are so *empowered* does not affect the fundamental nature of the duties they perform, which is accurately stated in the job specification and background statutory provisions noted earlier. Thus, the appellant's argument, that State and County Correctional Police Officers, like Sheriff's Officers and Police Officers, arrest, detain, charge, and process offenders against the law, is too narrow a description of the duties of Correctional Police Officers; overlooks *the primary focus* of their duties, which concerns security in the correctional facility setting; and is insufficient to render the duties of Correctional Police Officers comparable to the law enforcement duties performed by Sheriff's Officers and Police Officers for purposes of *N.J.A.C. 4A:4-2.3(b)2i*. Based on the foregoing, the appellant is unable to reduce his actual age by the number of years of his service in the titles of Juvenile Detention Officer, Correctional Police Officer Apprentice, or County Correctional Police Officer in order to meet the maximum age requirement as these titles are neither listed nor encompassed within *N.J.S.A. 40A:14-127.1a and N.J.A.C. 4A:4-2.3(b)2i*.

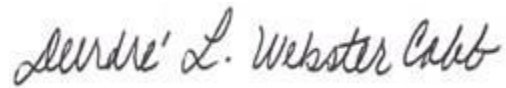
The appellant's remaining arguments are not persuasive. In this regard, he points to *N.J.S.A. 40A:14-180.3*. However, that statute only effected a title change from County Correction Officer to County Correctional Police Officer and did not purport to change the duties associated with the position. Additionally, the appellant's years of membership in PFRS is not dispositive. The issue is not PFRS membership, in and of itself, but is rather whether the appellant has previous years of service in a qualifying title. As set forth earlier, he does not.

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 27TH DAY OF APRIL 2022



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