



**STATE OF NEW JERSEY**

In the Matter of Matthew Hardy,  
Police Officer (S9999A), Deptford  
Township

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

CSC Docket No. 2022-2017

List Removal Appeal

**ISSUED: August 24, 2022 (SLK)**

Matthew Hardy, represented by Timothy J. Prol, Esq., appeals the decision to remove his name from the Police Officer (S9999A), Deptford Township (Deptford) eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Police Officer (S9999A), Deptford, which had an August 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. The S9999A list expires on May 14, 2023. His name was certified (OL200440) and he was ranked as the 4,505<sup>th</sup> candidate. In seeking his removal, Deptford indicated that the appellant had an unsatisfactory background report. Specifically, Deptford’s investigation revealed that the appellant was previously charged with two counts of aggravated assault and one count of burglary in Deptford. Additionally, in a past background investigation, the appellant failed to disclose a civil filing through the Gloucester County Civil Court.

On appeal, the appellant explains regarding the timing of his appeal, that he was just made aware that his name had been completely removed from the S9999A list. He states that he expected to receive a certification letter from the Gloucester County Sheriff Department (GCSD) after he completed its pre-employment process in June 2021, which included a background check and fingerprinting. The appellant provides that he was not appointed by the GCSD as he was not reachable for appointment due to his rank. However, he indicates that he wished to remain on the

list for a potential future appointment by the GCSD and to start the academy in February 2022. Thereafter, as time passed, and he did not receive a subsequent certification notice for the GCSD, he reached out to it in January 2022. The appellant states that this is when he first became aware that his name was no longer on the S9999A list. Subsequently, he contacted this agency, and about a month later, he learned from this agency that Deptford had removed his name from the list for an unsatisfactory background report. Consequently, upon learning this information, he appealed.

The appellant presents that in 2017, he was in the hiring process for a position with the Deptford Police Department (Police Department). He notes that he grew up in Deptford. The appellant indicates that the Police Department advised him that because of an arrest that happened over 15 years ago involving an officer who was still employed by it, there was a conflict of interest. He asserts that he understood why he was being denied employment by the Police Department. However, the appellant presents that he took the subject law enforcement examination because he sought employment with other jurisdictions. He indicates that he accepts being removed from the Deptford list, but he believes that it is unjust that his name was removed from the entire list so that other jurisdictions cannot consider him for appointment, such as GCSD which indicated that it would like to consider him for a potential future position.

The appellant reiterates that he does not recall receiving notice indicating that his name was removed from the entire S9999A list. He states that if he had received such notice, he would have timely appealed. The appellant highlights that he has taken the law enforcement examination four times and he has rehabilitated himself over the past 12 years to pursue a career in law enforcement.

In response, Deptford, represented by Albert K. Marmero, Esq., attaches the documentation that was submitted to this agency to support its request to remove the appellant from the “Deptford list only.” It indicates that at no time Deptford sought to remove the appellant from “all jurisdictional lists” and asserts that it simply followed the general procedural steps under *N.J.A.C. 4A:4-4.7* for removal from the “Deptford jurisdiction specific list.” Deptford presents that it takes no legal position to oppose the appellant’s appeal and clarifies that it never sought to remove the appellant from the entire Statewide S9999A list.

In reply, the appellant states that Deptford sought to remove him from “its list,” which apparently was certification OL200440, rather from the Statewide S9999A list. However, once Deptford returned the subject certification, this agency removed him from the Statewide list. The appellant notes that on April 6, 2022, he took the Oath of Office for the Salem County Sheriff’s Office and is seeking full-time employment there. Further, he presents that he is currently a sworn law enforcement

officer as he received a temporary appointment as a County Correctional Police Officer for Salem County.

Concerning his alleged unsatisfactory background, the appellant acknowledges that as a youth, he became embroiled in certain altercations which led to interactions with law enforcement. However, he emphasizes that in most instances, he was either not arrested, not charged, or the charges were dismissed or downgraded to ordinance violations. The appellant asserts that although his name appeared on police reports, he claims that he was a well-known African-American athlete in high school and most incidents involved outright racial discrimination at worst and “dog-whistle” peripheral racial undertones at best. The appellant describes incidents that occurred when he was between 18 and 21, including a June 29, 2003 incident in Deptford where he was not charged, a February 21, 2004 incident in Deptford where charges were dismissed, a July 2, 2004 incident in Woodbury where he was not charged, a March 27, 2005 incident in Deptford where he was charged with disorderly conduct, which was downgraded to a \$33 fine, and an August 31, 2006 incident where he was charged with a disorderly persons offense which was downgraded to a municipal ordinance violation. The appellant indicates that he has rehabilitated himself since that last incident by steering clear of individuals and situations which can lead to trouble, and his temporary appointment as a County Correctional Police Officer for Salem County, which included him passing a background check, a psychological test, and a physical evaluation.

The appellant argues that there was no inquiry as to whether his background was adverse to the position sought as there was no inquiry as to whether arrests that happened over 15 years ago, where he was only tangentially involved, should have removed him from consideration from every law enforcement department in the State. He states, at minimum, he should be afforded a hearing on this matter at the Office of the Administrative Law. Further, he states that there is no documentation from this agency explaining the reasons why it approved his removal from the list. Additionally, the appellant highlights that he passed the law enforcement examination with a 94 percent score, which he believes demonstrates that he possesses the skills, knowledge and abilities to be in law enforcement. He argues that as State public policy favors and rewards rehabilitation, he should be given a second chance, and his name should be restored to the list.

Moreover, the appellant claims that the incidents were racially-biased and involved intoxicated and combative individuals. He acknowledges that since Deptford had the most contact with him, it was logical that it sought to remove him from “its list,” and not the Statewide list, for its internal reasons. However, the appellant states that other jurisdictions would want to consider him for appointment, as evidenced by his temporary appointment as a County Correctional Police Officer by Salem County.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

*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).

*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.

Concerning the timeliness, although the notice for certification OL200440 was issued by this agency on or around June 15, 2021, and the appellant's appeal was not postmarked under February 22, 2022, the Commission shall accept that appellant's appeal as timely. The appellant indicates that he never received notice from this agency indicating that his name was removed from the S9999A list. Further, he states that he first learned from the GCSD that his name was removed from the entire Statewide S9999A eligible list in January 2022 and he first learned from this agency about a month later that he was removed from the list due to Deptford indicating that he had an unsatisfactory background.

Additionally, it is noted that there is no "Deptford" eligible list. Instead, there is a Statewide S9999A eligible list. On the appellant's application, he indicated that Municipal Police Officer was one of his preferred titles and he was interested in positions in Gloucester County among other counties. Therefore, when Deptford indicated to this agency that it needed to fill Police Officer positions, it requested a

certification of names. *See N.J.A.C. 4A:4-4.1(a)*. Further, the subject certification was drawn from the pool of eligibles from the Statewide S9999A eligible list. Moreover, since the appellant indicated that he was interested in a Police Officer position in Gloucester County, his name was certified to Deptford on certification OL200440. *See N.J.A.C. 4A:4-4.2(a)1*. Subsequently, when Deptford returned the certification to this agency requesting that the appellant's name be removed for cause, namely an unsatisfactory background under *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, it was requesting that the appellant's name be removed from the entire Statewide S9999A eligible list as there is no "Deptford jurisdiction only Police Officer list" under Civil Service law and rules. Specifically, when this agency accepts a single application, in this case the S9999A law enforcement examination, for one or more title areas, such as Police Officer, Sheriff's Officer, and County Correctional Police Officer, an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area. *See N.J.A.C. 4A:4-4.7(g)*. Accordingly, when Deptford's request was approved and recorded by this agency, the appellant's name was removed from the Statewide S9999A eligible list and no longer could be certified to any jurisdiction requesting a certification from the S9999A eligible list. If Deptford did not want to remove the appellant from the S9999A eligible list, but did not want to consider him for appointment, under the "Rule of Three," it could have, in its discretion, requested that the appellant's name be recorded as bypassed on certification OL200440. *See N.J.A.C. 4A:4-4.8(a)3*. It is also noted that the appellant could have indicated to Deptford, either at the time he replied to the certification notice or at any point prior to Deptford returning the certification's disposition to this agency, that he was not interested in appointment with Deptford, but that he would like to be retained on the list so that he could be considered for appointment by other jurisdictions.

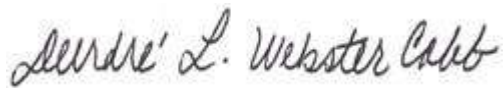
In this matter, the record indicates that the appellant had several negative interactions with law enforcement from 2003 to 2006. However, the record also indicates, based on the final dispositions of these matters, that they were relatively minor offenses. Further, these incidents occurred when he was 18 to 21 years. Moreover, the appellant presents sufficient rehabilitation as the last offense took place 13 years prior to the closing date and he currently serves as a County Correctional Police Officer for Salem County. *See In the Matter of Robert Merten* (MSB, decided December 1, 2004). Accordingly, given the facts of this matter, the Commission finds that the appellant's removal from the list was not warranted and his name restored to the (S9999A) eligible list for prospective employment opportunities only.

**ORDER**

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the (S9999A) 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 24<sup>TH</sup> DAY OF AUGUST, 2022



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