



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Richard Acevedo,  
Sheriff's Officer (S9999M), Passaic  
County Sheriff

List Removal Appeal

CSC Docket No. 2015-3175

ISSUED: **NOV 3 0 2016** (HS)

Richard Acevedo, represented by Michael L. Prigoff, Esq., appeals the attached decision of the Division of Agency Services (Agency Services), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Sheriff's Officer (S9999M), Passaic County Sheriff eligible list on the basis of falsification of his pre-employment application.

The appellant took the open competitive examination for Sheriff's Officer (S9999M), which had a closing date of August 2010, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on June 10, 2011 and expired on May 1, 2014.<sup>1</sup> The appellant's name was certified to the appointing authority on April 17, 2014. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he falsified his pre-employment application. Specifically, the appointing authority asserted that in response to the question, "Have you ever received a summons for a violation of the Motor Vehicle Laws in this or any other State?" the appellant failed to disclose a fictitious plates summons received in March 2014 and a careless driving summons received in December 2006. The appointing authority also asserted that the appellant stated that his New York driver's license had expired when it was actually valid until December 2018. The appellant appealed to Agency Services. Agency Services found that the appointing

<sup>1</sup> In *In the Matter of Entry Level Law Enforcement Exam (S9999M)* (CSC, decided June 5, 2013), the Civil Service Commission extended the June 9, 2013 expiration date of the eligible list until the eligible list for Entry Level Law Enforcement Exam (S9999R) became available.

authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant states that he completed his pre-employment application in May 2014 and listed six summonses for traffic violations in New York and New Jersey. The appellant states that he obtained driver abstracts from both states to refresh his recollection and ensure the accuracy of his pre-employment application. The appellant argues that the 2006 careless driving summons did not appear on either abstract, and thus, it was understandable that he did not recall it. Similarly, he did not recall the 2014 fictitious plates summons because it also did not appear on either abstract. Although the appellant acknowledges that he received these summonses, he contends that the omissions were inadvertent and not falsifications since he relied upon the abstracts, which are supposed to contain accurate records of violations. The appellant also posits that these omissions were immaterial to the position sought. In this regard, he states that the careless driving summons occurred eight years before he completed his pre-employment application and that the fictitious plates summons actually involved a transparent plastic cover on his license plate holder, "arguably the most benign traffic offense imaginable." Had he wished to conceal something relevant to the position, he would have omitted his arrest on a criminal charge but did not. Additionally, the appellant argues the fact that New York State had not cancelled his New York driver's license cannot provide a basis for a falsification claim. He explains that when he moved to New Jersey and obtained a New Jersey driver's license, he was required to surrender his New York license. The appellant claims that he legitimately assumed that New Jersey would send the license to New York for termination since one can only have an active driver's license in one state. Thus, it was not his fault that New York State did not act to terminate the New York license. In support, the appellant submits copies of his New Jersey and New York driver abstracts dated February 4, 2014 and February 6, 2014 respectively.

The appellant further claims that the last person on his certification was an individual named "Brian" who was already employed by the Passaic County Sheriff's Office in Corrections. According to the appellant, "Brian" investigated him for this position and, by disqualifying him, was hired. The appellant purports that this conflict of interest rendered his removal from the eligible list unfair. Additionally, the appellant claims that he knows of at least one unnamed individual who omitted three traffic violations on his application but was still hired after the individual was asked about the violations during the psychological interview. The appellant argues that by not providing him the same opportunity, he was treated unfairly.

The appointing authority, despite being provided the opportunity, did not present any arguments or documentation for the Commission's review.

## CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment list when he has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *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 the instant matter, the appointing authority asserted that although the appellant received a fictitious plates summons in March 2014 and a careless driving summons in December 2006, he did not disclose them on his pre-employment application. The appellant acknowledges that he received these summonses. Thus, it is clear that the appellant failed to disclose that information on his pre-employment application. Although the appellant contends that he did not recall the summonses due to his reliance on driver abstracts, it must be emphasized that it is the responsibility of an applicant, particularly an applicant for a sensitive position such as a Sheriff's Officer, to ensure that his pre-employment application is a complete and accurate depiction of his history. In this regard, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. An applicant must be held accountable for the accuracy of the information submitted on an application for employment and risks omitting or forgetting any information at his peril. See *In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991) (An honest mistake is not an allowable excuse for omitting relevant information from an application).

In this case, the appellant's omission of the summonses is sufficient cause to remove his name from the eligible list. The appellant failed to disclose this information on his application. Further, the relevant question asked whether the candidate had "ever received a summons for a violation of the Motor Vehicle Laws" (emphasis added) and did not include any time limit. Regardless, the appellant's summonses were not so remote in time as to render them immaterial. The careless driving summons was received approximately four years before the closing date for the examination. The fictitious plates summons was very recent, since it was received in the month preceding the certification date. For this 2014 summons, the appellant's explanation that it did not appear on his driver abstract is particularly unpersuasive. The type of omission presented is significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Indeed, an appointing authority's

assessment of a prospective employee could be influenced by such infractions, especially for a position in law enforcement. Moreover, motor vehicle infractions may reflect a disregard for the law, may be incompatible with the duties of a law enforcement officer and may justify the removal of a candidate from an eligible list for a law enforcement title. *See, e.g., In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003). Therefore, the information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his employment application. The appellant's failure to disclose the information is indicative of his questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Sheriff's Officer. In this regard, the Commission notes that a Sheriff's Officer is a law enforcement employee who must help keep order and promote adherence to the law. Sheriff's 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 Sheriff's Officers to present a personal background that exhibits respect for the law and rules. Since the omission of the summonses provides a sufficient basis to remove the appellant's name from the eligible list, it is not necessary to address the appointing authority's assertion that the appellant also falsified his application by stating that his New York driver's license had expired.

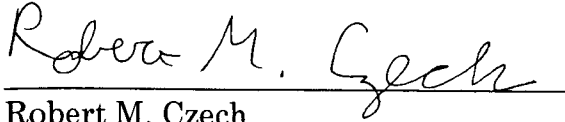
Regarding the appellant's claim that an individual who appeared on his certification named "Brian" investigated him, he has not provided any substantive evidence to support this claim other than general assertions. The appellant's claim that another, unnamed candidate who omitted traffic violations on his application but was still hired is similarly unsubstantiated. As such, these claims do not warrant the restoration of the appellant's name to the eligible list.

### 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 23<sup>RD</sup> DAY OF NOVEMBER, 2016



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

- c. Richard Acevedo  
Michael L. Prigoff, Esq.  
Richard H. Berdnik  
Kelly Glenn



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
AGENCY SERVICES  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

Robert M. Czech  
Chair/Chief Executive Officer

May 14, 2015

Michael L. Prigoff, Esq.  
Lebson & Prigoff, LLC  
POBOX 68  
39 Park Place  
Englewood, NJ 07631-0068

**RE: Removal of Name from Eligible List – Richard Acevedo**

**Title: Sheriffs Officer**  
**Jurisdiction: Passaic County**  
**Symbol: S9999M**  
**Certification No: OL140471**  
**Certification Date: 4/17/14**

Dear Mr. Prigoff:

This is in response to your correspondence contesting the removal of your client's name from the above-referenced eligible list.

In a letter dated December 10, 2014 this office provided to you the information utilized by the Appointing Authority which justified their decision to remove your client's name. You were informed in our letter that you had twenty (20) days to submit your appeal arguments after your receipt of the information provided by the Appointing Authority. To date, we have not received a formal appeal from you or your client. The time period to submit arguments has now elapsed and we therefore have made our determination based on the information submitted by all parties.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)6, which permits the removal of an eligible candidate's name from the eligible list if the eligible "Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process."

In support of its decision, the Appointing Authority provided copies of selected pages of your client's Personal History Statement & Questionnaire (Questionnaire). As part of the pre-employment process, your client was required to provide a complete and accurate record of his background. The documentation submitted by the Appointing Authority demonstrates that your client did not comply with these instructions. The documentation from the Appointing Authority cites several motor vehicle infractions which appear on Mr. Acevedo's driver abstract, but which were not listed on his application. Specifically, it has been held that a candidate's name may be removed from an eligible list

based on falsification of the employment application when the withheld information is material to the position sought, not whether there was any intent to deceive on the part of the applicant.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's decision to remove your client's name has been sustained and the appeal is denied. Please note that S9999M expired on May 1, 2014; therefore, no further certifications will be issued from the eligible list.

In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director  
Division of Appeals and Regulatory Affairs  
Written Appeals Record Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Director,



Elliott Cohen  
Human Resource Consultant  
Local Placement Services

Richard H. Berdnik, Sheriff  
Passaic County Sheriff  
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