



STATE OF NEW JERSEY

In the Matter of Rafael Parra,
Police Officer (S9999M), Jersey City

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-1470

List Removal Appeal

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

Rafael Parra, 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 Police Officer (S9999M), Jersey City, eligible list on the basis of providing a false statement of material fact and an unsatisfactory background report.

The appellant took the open competitive examination for Police Officer (S9999M), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on October 7, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of providing a false statement of material fact. Specifically, the appointing authority asserted that the appellant failed to disclose on the employment application and his candidate interview that he was arrested in 2001 in Lodi and charged with Failure to Appear, and arrested in 2008 in New Brunswick and charged with Failure to Appear.¹ The appointing authority also asserted that the appellant did not disclose on the employment application and his interview that he was terminated from

¹ It is noted that the appointing authority did not provide any substantive documentation to show that the appellant was arrested in 2001 and 2008. However, the appellant's driver's abstract indicates entries for Failure to Appear on January 10, 2001; March 11, 2001; September 30, 2002; November 18, 2002; November 29, 2002; January 17, 2003; March 29, 2004; and May 28, 2004.

employment at Saint Mary's Hospital in Hoboken.² It is noted that the appellant's driver's abstract reflects several motor vehicle related infractions and violations, including four motor vehicle suspensions.³ On appeal to Agency Services, the appellant argued that the appointing authority did not provide any documentation to show that his name should be removed from the list.⁴ In response, Agency Services provided the appellant with documentation from Saint Mary's Hospital indicating, among other things, that he was terminated from employment effective June 20, 2008. Agency Services upheld the appointing authority's request to remove the appellant's name from the subject eligible list.

On appeal, the appellant maintains that the appointing authority did not provide any substantive information in support of its determination to remove his name from the list. As such, the appellant states that he is unable to properly argue the appeal of this matter.

In response, the appointing authority, represented by Vincent Signorile, Assistant Corporation Counsel, maintains that the appellant's name should be removed from the eligible list. Specifically, the appointing authority asserts that the appellant did not disclose during his interview that he was arrested and charged with Failure to Appear in 2001 and 2008. The appointing authority adds that the appellant received a summons for drinking in public when he was under age 21. Further, the appointing authority explains that the appellant indicated on the employment application and during the interview that he voluntarily left employment at the hospital, which is contrary to the appellant's former supervisor's report that he was terminated from employment. In this regard, the appellant's former supervisor indicated on the employment verification form that the appellant was terminated due to excessive absences and lateness. Moreover, the appointing authority asserts that the appellant's driver's history includes several infractions and suspensions of his driver's license. As such, the appointing authority states that the appellant's background is sufficient cause to remove his name from the list.

² The appointing authority also noted that the appellant failed to register for Selective Service.

³ It is noted that the appellant's driver's abstract indicates, among other things, Unsafe Operation of a Vehicle in October 2012; Improper Display/Fictitious Plates in January 2012; Speeding in October 2009; Obstructing Passage of other Vehicles in May 2009; Failure to wear a seat belt in September 2008; Unsafe Operation of a Motor Vehicle in April 2008; Non-payment of Insurance Surcharge in June 2008; Non-payment of Insurance Surcharge in June 2007; and Non-Payment of Insurance Surcharge in January 2007. The appellant's driver's license was suspended from March 11, 2001 to November 10, 2006; January 21, 2007 to February 8, 2007; June 24, 2007 to February 11, 2008; and June 15, 2008 to June 26, 2008. The appellant's commercial driver's license was also suspended on four occasions.

⁴ It is noted that the appellant argued on appeal to Agency Services that he believed that he was removed on the basis of psychological unfitness.

In support, the appointing authority provides a copy of the appellant's driver's history and employment documentation indicating that he was terminated from employment at Saint Mary's Hospital.

Despite being provided with the opportunity, the appellant did not provide a response.

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 individual from an eligible list when he or she 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:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Civil Service 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.

Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998); *In the Matter of Yolanda Colson, Correction Officer Recruit (S9999A), Department of Corrections*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003). *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 Agency Services provided the appellant with all of the material supplied by the appointing authority in support of its request to remove his name on the basis of providing a false statement of material fact, and the appellant had the opportunity to present arguments in support of his appeal. As such, the appellant did not provide any substantive information to show that he was prejudiced by Agency Services' initial determination upholding the removal of his name from the list. The record shows that the appointing authority acted in accord with Civil Service laws and rules and the list removal is consistent with the reasons noted above. Moreover, the Commission is satisfied that the appellant was

provided with sufficient documentation in order to present arguments in support of his appeal in this matter.

In this matter, the appointing authority did not provide a copy of the employment application for review. Since the appointing authority did not provide a copy of the employment application, it did not substantiate its claims that the appellant falsified the employment application. Nonetheless, a review of the employment contact form completed by Saint Mary's Hospital indicates that the appellant was charged with excessive absences and lateness and did not resign in good standing. Although the appellant stated during his interview that he resigned in good standing, he did not provide any substantive information to refute the information on the employment contact form. Since Saint Mary's Hospital completed the employment contact form, it is sufficient to confirm that the appellant was terminated from employment. Accordingly, the appellant did not refute the appointing authority's argument that he provided a false statement of material fact.

It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Police Officer, to ensure that he provides 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), 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 and risks omitting or forgetting any information at his or her 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). The type of omission presented is clearly significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. The information noted above, which the appellant failed to disclose, is considered material and should have been disclosed to the appointing authority at the time of his interview. The appellant's failure to disclose the information is indicative of his questionable judgment.

Additionally, the appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a law enforcement officer. The appellant's driving record indicates that his driver's license was suspended on four occasions. His driving record also indicates numerous violations of the motor vehicle laws of New Jersey. In that regard, his complete driving record is considered for this matter. Furthermore, the last suspension occurred less than five years before he applied for the subject examination. It cannot be ignored that the appellant's driver's abstract reflects that his driver's license was suspended on four occasions, and for significant periods of

time. The first suspension spanned a period of over five years, from March 2001 to November 2006, and the third suspension for nine months, from June 2007 to February 2008. The Commission cannot ignore that the appellant had multiple license suspensions for significant periods of time. The appellant's driver's abstract also reflects entries for non-payment of insurance surcharges in January 2007, June 2007, and June 2008. The appellant's driving record reflects several entries of failure to appear on January 10, 2001; March 11, 2001; September 30, 2002; November 18, 2002; November 29, 2002; January 17, 2003; March 29, 2004; and May 28, 2004. While some of the incidents happened several years ago, it is clear that these violations were not limited to just one isolated incident. In this regard, it is recognized that Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an 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 Police Officers to present a personal background that exhibits respect for the law and rules. The record of infractions shows a pattern of disregard for the motor vehicle laws and rules and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a law enforcement position. Therefore, it is clear that the appellant's driving record reflects adversely on the appellant's character and his suitability for the position at issue.

Regarding the appointing authority's contention that the appellant was arrested in 2001 and 2008, other than the appellant's driving history noted above, the appointing authority did not provide any substantive evidence in support of its contentions. As such, it is unclear that the appellant was arrested in 2001 and 2008. However, it is unnecessary to consider these incidents as the Commission has upheld the removal of his name on other grounds.

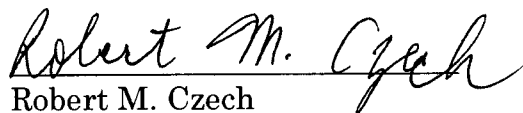
Accordingly, given the position at issue and in consideration of the totality of the evidence in the record, the appointing authority has presented a sufficient basis to remove the appellant's name from the eligible list for Police Officer (S9999M), Jersey City.

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 23rd DAY OF NOVEMBER, 2016



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Chairperson
Civil Service Commission

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and
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September 28, 2015

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RE: Removal of Name from Eligible List – Rafael Parra

Title: Police Officer
Jurisdiction: Jersey City
Symbol: S9999M
Certification No: OL131322
Certification Date: 10/07/13

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 November 26, 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. In a letter dated December 30, 2014, you were granted an extension until January 31, 2015 to submit your arguments. 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 client's 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). The Appointing Authority states that your client was untruthful when asked about his separation from employment in 2008. In addition, he omitted information regarding a physical altercation in 2001. 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. 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 client's 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:

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Sincerely,
For the Director,



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