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STATE OF NEW JERSEY

In the Matter of Wayne Kubs, Police Officer (S9999R), Rutherford

DECISION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1640

List Removal Appeal

ISSUED: APR 26 2017 (CSM)

Wayne Kubs, represented by Catherine Elston, Esq., appeals the appointing authority's request to remove his name from the eligible list for Police Officer (S9999R), Rutherford, on the basis of falsification of his employment application.

By way of background, in disposing of the May 12, 2014 certification, the appointing authority requested the removal of the appellant's name, a veteran, contending that the appellant had falsified his employment application. Specifically, the appointing authority presented that question #29 of the application asked candidates if they had "ever been arrested or charged, EVEN IF NOT CONVICTED OR WHETHER EXPUNGED (emphasis in original), with any felony, crime, misdemeanor, disorderly persons offense or any other offense include traffic violations in New Jersey or anywhere else?" The instructions to question #29 defined "offense" to include all high misdemeanors, felonies, misdemeanors, disorderly persons offenses or any criminal statute, including all juvenile violations. The appellant answered "no". However, the appointing authority found that the appellant was arrested on July 31, 1991 for fighting by Rutherford's police department, released to the custody of his father, but never charged. Additionally, question #34 asked candidates to list "all motor vehicle moving violations and parking violations that you have been issued a summons," including DWI offenses. In response, the appellant indicated that from 2002 to 2005 he had three speeding tickets in Florida and at around the age of 18 he had a speeding and careless driving violation in Sparta and a speeding violation in Clifton. He also stated "I also have had a few miscellaneous parking tickets but don't recall the dates or how many." However, the appointing authority provided copies of the New Jersey Automated Traffic System General Inquiry for the appellant which revealed he

received a ticket for failure to possess a driver's license on January 14, 2010 and a failure to have inspection on December 6, 2006.

The appointing authority also found that the appellant falsified his explanation as to why he was terminated from Valley Hospital in October 2009. Although the appellant indicated he was terminated because of a disagreement on the care of a patient, the appointing authority contacted his former supervisor who indicated that he was terminated as a result of multiple complaints. The appointing authority also indicated that the appellant was unable to follow orders when completing his application, which showed that he could not follow the application's most basic directions. For example, he did not place his initials next to requested documents that pertained to him or place an "N/A" next to items that did not apply to him. Further, his employment history showed 21 different employers, which it felt showed a lack of commitment and desire to be a Police Officer. Additionally, two Police Officers from a neighboring jurisdiction responded to headquarters, unsolicited, and expressed concerns about how the appellant treats people on medical calls in his capacity as a paramedic. Therefore, it determined that his inability to follow directions of the application process, his education level, personality flaws, and poor writing skills were not consistent with the fundamental people and communications skills needed to be a Police Officer. As such, the appellant's name was removed from the list.

Subsequently, the appellant filed a verified complaint against the appointing authority and its various officials as well as the Civil Service Commission (Commission) in the Superior Court of New Jersey, Law Division. On November 18, 2014, the Law Division dismissed the complaint without prejudice and transferred the matter to the Commission finding that it had the primary jurisdiction in this case. The appellant appealed this decision to the Appellate Division, which upheld the Law Division's determination. See *In the Matter of Wayne R. Kubs and Allyson Kubs v. Borough of Rutherford, et al.*, Docket No. A-1937-14T3 (App. Div. June 21, 2016). Thereafter, the appellant petitioned the Supreme Court for leave to appeal, which was denied on December 6, 2016.

On appeal, the appellant states that on July 31, 2014, the former Division of Local Human Resource Management (LHRM)¹ initially determined that the reasons provided in the appointing authority's June 18, 2014 background report were insufficient to dispose of the certification and to remove a veteran for "good cause as established by the appointing authority." Therefore, since the statute providing for veterans preference is to be liberally construed and his misrepresentations on his application were not intentional, his name should be restored to the list and he should be permanently appointed. In this regard, the appellant maintains that the application specifically requested applicants to list "all motor vehicle **moving** violations" and the tickets he did not list were not moving violations. As such, he

¹ LHRM is now known as the Division of Agency Services (Agency Services).

argues that he was not required to list them on his application. Regardless, the appellant underscores that he listed the more serious violations he received and it would be illogical for him to intentionally omit two benign non-moving violations.

Regarding his failure to list the 1991 juvenile incident, the appellant states that no charges were ever filed against him and given his exemplary service in the military and volunteer service, it would be illogical that a sole juvenile event when he was 14 years old would preclude him from becoming a Police Officer. The appellant also asserts that he did not falsify the reason for his termination from Valley Hospital in 2009 as the individual contacted by the appointing authority was terminated and no longer worked there when he was contacted. Regarding his prior infractions while employed at Valley Hospital, he received counseling, a written reprimand, and suspension for incidents concerning patient care. Further, the appellant claims that the hiring process was tainted as the Mayor participated in it when his nephew was also competing for the position. Finally, the appellant requests a hearing.

In response, the appointing authority, represented by Dominic DiYanni, Esq., presents that after conducting a background investigation of the candidates, it was concluded by the Chief of Police that the appellant should not be appointed. It explains that the submissions it provided to LHRM when it initially disposed of the certification and when it responded to the routine deficiency notice demonstrated that he falsified his application. Specifically, the appellant did not disclose certain incidents, charges, and disciplinary actions on his application which were material to the position sought.

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 removal of an eligible's name from an employment 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 removal 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).

N.J.A.C. 4A:4-6.1(a)7 states that an eligible may be removed from the list who has a prior employment history which relates adversely to the 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 an appointing authority's decision to remove his or her name from an eligible list was in error.

In the instant matter, the appointing authority removed the appellant's name from the subject list since he failed to disclose on his application that he was arrested on July 31, 1991 for fighting, received tickets for failure to possess a driver's license on January 14, 2010 and a failure to have inspection on December 6, 2006, and that he falsified his explanation as to why he was terminated from Valley Hospital in October 2009. It also noted that the appellant was unable to follow directions when completing his application, had an employment history of 21 different employers, that two Police Officers from a neighboring jurisdiction responded to headquarters, unsolicited, and expressed concerns about how the appellant treats people on medical calls, and had poor writing and communication skills.

Although the appellant argues that it would be illogical for him to intentionally fail to disclose his juvenile arrest and that he was never charged, question #29 **clearly** asked applicants if they had ever been arrested, even if not convicted, including all juvenile violations, and the appellant responded "no." Further, the appellant contends that question #34 is misleading as it only asks applicants to disclose moving violations and does not apply to the two non-moving violations he did not disclose. Additionally, the appellant indicated that he was terminated from Valley Hospital for disagreement over patient care on his application but explains in a certification provided on appeal that he received disciplinary action, the last for a complaint from an EMT when it appeared that he did not want to be on call, that resulted in his termination. This statement demonstrates that the appellant was ultimately terminated based on a complaint from an EMT regarding being on call, *not* patient care. Therefore, the Commission finds that the appellant's arguments with respect to question #34 and his termination from Valley Hospital unpersuasive.

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 or her peril. *See In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991). The information that the appellant failed to disclose is considered material and should have been accurately indicated on his employment

application. 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 his 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. In this regard, it is recognized that municipal 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. In this regard, the crux of this matter is not whether the actual issues in the appellant's background were sufficient to remove his name from the subject list, but rather, was his omission of such information sufficient for removal. Without accurate and complete information, an appointing authority cannot make an informed employment decision. In this matter, the appellant's omissions and inconsistent information call into question his integrity and judgment, which is unacceptable for an individual seeking a position as a Police Officer.

In addition to the non-disclosed citations and the "few miscellaneous parking tickets," the appellant indicated that he received three speeding tickets in Florida between 2002 and 2005 and his driver's abstract indicates that he received a speeding ticket in January 1995, a violation for careless driving in November 1995, and that his license was suspended in October 1996. While the appellant disclosed some of these violations, they are relevant to the position sought, as such conduct reveals a disregard for motor vehicle laws and is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Police Officer. Further, the appellant was terminated from his position with Valley Hospital in October 2009, less than five years prior to the list being certified, based performance issues and a complaint from another EMT. Generally, the totality of these circumstances would provide a sufficient basis on which to remove the appellant's name from the Police Officer (S9999R) eligible list. However, the appellant argues that the selection process was tainted since the Mayor participated in the overall hiring process but only recused himself from the selection of his nephew, a lower ranked non-veteran eligible, who was appointed from the certification. As such, the Commission is reluctant to make a decision in this particular case on the written record given the appellant's allegation that the appointment process was tainted in order to reach the Mayor's nephew and that, absent the disqualifications gleaned through the pre-employment process, the appellant's appointment would have been mandated since he is a veteran. Therefore, this matter should be referred to the Office of Administrative Law for a hearing to determine if the Mayor's participation tainted the selection process to the adverse detriment of the appellant.

ORDER

Therefore, it is ordered that this matter be referred to the Office of Administrative Law for a hearing.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19th DAY OF APRIL, 2017



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