



STATE OF NEW JERSEY

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

In the Matter of Duane Cole,
Correction Officer Recruit, JJC
(S9999R), Juvenile Justice
Commission

List Removal Appeal

CSC Docket No. 2017-2696

ISSUED: APRIL 10, 2018

(EG)

Duane Cole, represented by Nicholas J. Palma, Esq., appeals the removal of his name from the Correction Officer Recruit, JJC (S9999R), Juvenile Justice Commission eligible list due to falsification of his pre-employment application.

The subject eligible list was promulgated on May 2, 2014 and expired on March 22, 2017. In disposing of the August 22, 2015 certification, the appointing authority requested that the appellant's name be removed from the subject eligible list for falsification of his pre-employment application. Specifically, it asserted that the appellant failed to indicate a disorderly person charge filed against him in response to question 27 on his pre-employment application which asked applicants if they had ever been arrested, indicted charged with or convicted of a criminal or disorderly offense. The appellant filed an appeal of his removal with the Civil Service Commission (Commission). In a letter dated July 28, 2016, staff from this agency informed the appellant that based on the information on the record, the appellant had not met his burden proof in his appeal and that the matter was being closed. Thereafter, the record indicates that the appellant received a letter dated August 29, 2016, from the appointing authority stating that he was scheduled for pre-employment processing on September 12, 2016.

On appeal, the appellant indicates that in response to the August 29, 2016 letter, he attended pre-employment processing on September 12, 2016. He claims that during this processing he disclosed his full juvenile record. Additionally, the appellant asserts that on December 12, 2016, he had an in-person interview with the appointing authority in his home. He never heard back from the appointing

authority after that date. The appellant argues that he did not intentionally misrepresent any information on his application and he simply forgot to disclose two juvenile charges he received while in high school. The first charge was for fighting in school on February 2, 1999. The appellant asserts that the matter was ultimately dismissed after being held in abeyance for six-months. The second charge was issued for removal of signs in Fair Lawn on May 23, 1999. This charge was also ultimately dismissed. The appellant argues that 18 years have passed since these incidents and that he had not been charged with any violations since that time. Further, the appellant asserts that he did not withhold any information material to the position of Correction Officer because the incidents, which occurred almost 20 years ago, have no bearing on his current character.

The appointing authority, despite being provided the opportunity, did not provide any new arguments or evidence for the Civil Service Commission (Commission) to review.

CONCLUSION

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 the appellant's name from an eligible list was in error. Additionally, *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 who has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

Initially, the Commission notes that a review of the record reveals that the appellant's name was only certified on August 22, 2015 from Correction Officer Recruit, JJC (S9999R), Juvenile Justice Commission eligible list. Upon disposition of that certification on July 6, 2016, his name was removed from the eligible list for falsification. The record indicates that the appellant failed to disclose his juvenile offenses. The appellant was required to provide a complete and accurate record of his background for review by the appointing authority as part of the pre-employment process. The record indicates that he failed to do so. In this regard, the Commission notes that the appellant failed to list his juvenile offense on her pre-employment application. On appeal, the appellant states that he did not purposely leave any information out of his application. The appellant argues that he did not recall the incidents when completing his application. However, even assuming, *arguendo*, that the appellant merely forgot to include this information, 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) (A Fire Fighter applicant who alleged he could not recall certain information omitted from an application should be removed from the list since an

honest mistake is not an allowable excuse for omitting relevant information from an application). In this regard, charges filed against applicants for law enforcement positions are considered material and should have been accurately indicated on his employment application. His failure to disclose this information is indicative of the appellant's lack of integrity and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correction Officer Recruit, JJC and the falsification of his pre-employment application presents a basis to remove the appellant's name from the subject eligible list. Accordingly, based on the appellant's omission on his pre-employment application, the Commission finds sufficient basis in the record to remove her name from the eligible list for Correction Officer Recruit, JJC (S9999R).

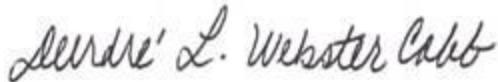
One final note, the issuance of the September 12, 2016 letter by the appointing authority to appear for pre-employment processing appears to have been made in error. The appellant's name was not certified again after the August 22, 2015 certification. In this regard, it is noted that no vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); and *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998).

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 4TH DAY OF APRIL, 2018



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