STATE OF NEW JERSEY

In the Matter of David Samler, Police Officer (S9999U), Point Pleasant	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2018-539	List Removal Appeal

ISSUED: APRIL 9, 2018 (SLK)

David Samler appeals his removal from the eligible list for Police Officer (S9999U), Point Pleasant, on the basis of falsification of his pre-employment application.

By way of background, the appellant's name appeared on certification OL170384 that was issued to the appointing authority on March 31, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he falsified his application. Specifically, the appellant failed to disclose over 14 police department incidents/cases in which he was involved including juvenile delinquency charges, failed to list all of his motor vehicle violations, and failed to record all of his employment history.

On appeal, the appellant presents that he completed his application in a manner that was truthful to the best of his knowledge. He states that he could not remember every detail regarding incidents that were over 10 years old and he informed the investigating Detective that there might be certain details, such as his driving record, that may not be completely accurate. The appellant explains that the bulk of the incidents that he did not disclose took place when he was a juvenile over 10 years ago and in many cases, he was simply answering Police Officer questions where he did not think a crime was committed nor would there be a report. With respect to a specific juvenile charge that involved graffiti, the appellant presents that he was unaware that there was a charge against him as he contends that the juvenile review board advised him that there would not be a record of this incident once he completed his eight hours of community service. The appellant indicates that the driver abstract that he obtained from the Motor Vehicle Commission only provided his violations that occurred within the past five years and he disclosed them. He

states that he informed the investigating Detective that he could not remember every motor vehicle violation and he had multiple traffic stops where he had been given a warning. The appellant states that he informed the interviewers that, in addition to formal employment, he worked for relatives performing tasks such as demolition, painting, and similar work and the work was sporadic and not for a specific company with a formal start and end date. He indicates that he usually was not paid for such work and he did work for his father in exchange for him paying off his student debt. The appellant reiterates that he did not intentionally falsify his application as this was the first time he applied for a law enforcement position and he provided information to the best of his ability. He highlights that he graduated from college with honors and had a very high score on his Civil Service examination.

In response, the appointing authority, represented by Christopher K. Koutsouris, Esq., presents that the appellant was asked on his application if he had ever been charged with Juvenile Delinquency and he responded, "No." However, in 2005, the appellant was charged with Criminal Mischief in Point Pleasant. During his interview, the appellant acknowledged that he wrote a portion of the graffiti and he appeared before a judicial diversionary program where he was sentenced for the charge. It indicates that the appellant was also asked if he had ever been held as a suspicious person or investigated by any law enforcement agency or private security agency for any reason and he responded, "No." However, the appointing authority indicates that the appellant was held and investigated by law enforcement agencies on numerous occasions. It lists 10 separate incidents where the appellant was investigated with the most recent incident taking place in December 2011 where the appellant, as an adult, was a suspect in a road rage assault. The appointing authority states that during his interview, the appellant acknowledged many of these incidents and that he has had "many contacts" with the police. It asserts that the appellant stated he did not disclose these incidents because he did not believe these matters would show up in reports.

Additionally, the appointing authority states that although the appellant was asked on his application to indicate any motor vehicle accidents that he was involved with, he failed to disclose a motor vehicle accident that took place in February 2011 that was on his driver's abstract. Further, the appellant admitted during his interview that he was involved in two or three other motor vehicle accidents where there was no police report. Moreover, the appellant was asked if he ever received a summons for violating a motor vehicle law. However, he failed to disclose a March 2012 delaying traffic violation in Brick and a December 2011 summons for obstruction of windshield for vision in Manasquan. Additionally, during his interview, the appellant acknowledged that there were other contacts with law enforcement where he was stopped for motor vehicle violations, but did not receive summonses. He admitted that he had been stopped on the Parkway one night for traveling 80 miles per hour and given a summons for a non-moving violation and acknowledged that he typically travels in excess of 80 miles per hour on the Parkway.

The appointing authority presents that the appellant indicated during his interview that he worked for family members in exchange for having bills paid and that he did not disclose this employment because it was "never on the books." Further, the appellant acknowledged on his employment application that he did not report tips that he received while working for a coffee shop to the Internal Revenue Service (IRS). Moreover, the appellant admitted that he smoked marijuana in high school and college and the last time he smoked was April 2016. Therefore, in addition to having falsified his application, the appointing authority argues that the appellant has an unsatisfactory background.

In reply, the appellant highlights that although the appointing authority was advised by the Division of Appeals and Regulatory Affairs (DARA) that it be required to reply to his appeal within 20 days, the appointing authority's reply was submitted 21 calendar days after the receipt of this letter. The appellant complains that he was required to appeal within 20 days of his receipt of notice that he was removed from the list and therefore he requests that the Civil Service Commission (Commission) not consider the appointing authority's submission. The appellant also complains that he requested that the appointing authority send him copies of reference letters and detective notes from his background investigation and it has not complied. He believes that the Commission cannot make a fair and impartial decision without this information and this situation is particularly unjust since he does not have the appointing authority's resources.

With respect to the falsification charge, the appellant reiterates that he was not made aware that there was a juvenile delinquency charge against him as he was simply brought to the police and picked up by his parents. Similarly, he presents that since many of the juvenile incidents were handled informally, he was not aware that there were reports and he disclosed these old incidents as best as he could remember. The appellant claims that he was simply a passenger in the 2011 "road rage" incident and that the police report is not accurate. He invites the Commission to contact the driver who can corroborate his recollection of the incident. The appellant indicates that, contrary to the appointing authority's assertion, he did disclose the February 2011 motor vehicle accident. However, he estimated the date, as he did not have the police report. Similarly, the appellant states that a speeding ticket that he disclosed was the same incident as the delaying traffic violation in Brick, which the appointing authority claims he did not disclose. He explains that since his driver's abstract only provided details for the last five years, he provided details for prior incidents to the best of his recollection. The appellant indicates that he was advised that it would take seven days for him to receive a more complete driver's abstract and therefore he would not have been able to receive it in time to return his application. The appellant acknowledges that he would regularly drive 80 miles per hour on the Parkway while driving in the flow of traffic in certain areas during the day. He contends that it is well known that driving at this speed on the Parkway is common in certain areas and he was explaining during his interview why he thought it was acceptable to drive at

this speed as a new driver. The appellant emphasizes that he was completely honest about his marijuana use and this reason was never mentioned as a basis for his removal. Therefore, he believes his marijuana use should not be considered by the Commission. The appellant highlights that he was the fourth ranked eligible and that the appointing authority hired the seventh ranked eligible. He believes that the appointing authority's claim that he falsified his application was done to circumvent Civil Service rules and hire the seventh ranked eligible.

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 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)11 provides that an eligible may be removed from the list for other valid reasons as determined by the Commission.

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.

It is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a municipal police department, when requested for purposes of making a hiring decision. However, *N.J.S.A.* 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. Accordingly, the disability arising under *N.J.A.C.* 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal. However, it is noted that although it is clear that the appellant was never convicted of a crime, he has been arrested on several occasions. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

In this matter, the appellant failed to disclose or failed to fully and accurately disclose many negative interactions with law enforcement including a road rage incident, many juvenile incidents including a charge where he was sentenced to community service, and many negative driving incidents including some where he

did not receive a summons. The Commission finds it disingenuous that the appellant did not know that he was charged with juvenile delinquency as he was actually sentenced and served community service for this charge. Further, 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. Therefore, even if there was no intent to deceive on the appellant's part and even if he did not commit wrong doing on some of these incidents as he contends, in light of the appellant's consistent pattern of negative interactions with law enforcement that started as a juvenile and continued as an adult, his failure to completely and accurately disclose these negative interactions with law enforcement is 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 Police Officer. At minimum, the appointing authority needed this information to a have a complete understanding of his background in order to properly evaluate his candidacy. Therefore, in reviewing the totality of the appellant's background, the Commission finds that it was appropriate for the appointing authority to remove his name from the Police Officer list based on falsification. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017).

The Commission also finds that the appellant has an unsatisfactory background. The appellant acknowledged that he has smoked marijuana in both high school and college, with the last time as recently as April 2016. Further, the appellant admitted that he regularly drives significantly above the speed limit and he did not respond to the appointing authority's claim that he received tips while working which he did not report to the IRS. Therefore, in addition to numerous negative interactions with law enforcement, the fact that the appellant was candid with his drug use and that others may drive above the speed limit or not report all of their income to the IRS does not excuse the appellant from engaging in such activity. 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 Municipal Police Officers to present a personal background that exhibits respect for the law and rules.

Some other matters need to be addressed. The appellant states that the appointing authority's response was 21 days after it received notice that it was required to respond within 20 days. The appellant complains that he only had 20 days to appeal and therefore the appointing authority should be held to the same

standard and their "untimely" response should not be considered. Initially, it is noted that DARA's letter advising the parties of the time periods to respond is dated September 5, 2017 and the appointing authority's response is post marked September 25, 2017. When factoring in mailing time, the appointing authority's response is timely. Further, while an appellant, under *N.J.A.C.* 4A:2-1.1(b), has 20 days to file an appeal from when either the appellant has notice or should have reasonably have known of the decision, situation, or action being appealed, there is no statutory or regulatory mandate requiring either party to file a response to an appeal within 20 days. This lack of mandate applied equally to the appellant and the appointing authority and the appellant could have requested additional time to respond to the appointing authority if needed. In reference to the appellant's comments that the appointing authority should be required to provide all references and detective notes from its background investigation, he has not been put at a disadvantage because the appointing authority has not provided all of this requested documentation, or established that the Commission cannot make a fair and impartial decision without all of this information. In this matter, the appointing authority provided ample documentation to support its reasons for removing the appellant. Further, while the appellant wants to escape scrutiny from his admitted engagement in illegal activity as recently as April 2016 based on his perception of a procedural violation by the appointing authority, as the appellant was notified of the appointing authority's position regarding his marijuana use on appeal, the appellant had ample notice to respond to this allegation and the Commission rightfully considered it.

Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999U), Point Pleasant 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 4th DAY OF APRIL, 2018

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