



STATE OF NEW JERSEY

In the Matter of Kyle Atkins,
Correctional Police Officer (S9988V),
Department of Corrections

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

CSC Docket No. 2019-3532

List Removal Appeal

ISSUED: SEPTEMBER 12, 2019 (SLK)

Kyle Atkins appeals his removal from the eligible list for Correctional Police Officer (S9988V), Department of Corrections, on the basis of falsification of his employment application.

By way of background, on May 31, 2019, the Department of Corrections (Corrections) sent a notice to the appellant indicating this his name had been removed from the list for falsification of his employment application. Specifically, it indicated that he failed to disclose previous employers on his application: Cedar Hill Health Care Center, Shoprite, The Young Men’s Christian Association of Montclair, and 24-Hour Fitness USA, Inc. It is noted that the list for Correctional Police Officer (S9988V) is set to expire on September 27, 2019.

On appeal, the appellant presents he did list the years, the manager names, and phone numbers for the above-mentioned employers. However, he acknowledges that he mistakenly did not write the company names of each employer in the subject line on the application. The appellant indicates that he faxed each employer so that references could be provided. He states that it was not his intention to present false information.

In response, the appointing authority presents that its removal criteria indicates that a candidate can be removed if the candidate has been found to have falsified any document, has failed to disclose all requested information in the application, or intentionally gives false information during any part of the pre-

employment process. It acknowledges that there is no clear evidence that the appellant falsified or willfully failed to disclose his past employers. However, it states that the appellant failed to carefully prepare his application and provide complete information.

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 Civil Service Commission (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:4-6.3(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, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In the instant matter, the appointing authority did not have a valid reason to remove the appellant's name from the list. 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 case, the appointing authority has not made any argument that the omitted information was relevant in determining whether the appellant has the good judgment and character to be a Correctional Police Officer. Instead, it simply requests that the appellant's name be removed because he failed to carefully prepare his application and provide complete information. However, a review of the appellant's application indicates that he did disclose his prior employment information. He simply mistakenly omitted the company names. However, the appellant provided sufficient information that the appointing authority could research the appellant's employment history. Additionally, the appellant requested each employer provide the details of his employment. Further, there is no allegation that the appellant was attempting to deceive the appointing authority by his omission. While the Commission is mindful of the high standards for law enforcement officer, the Commission finds that the appellant's inadvertent omission of his past employer company names, but not other contact information, was an immaterial oversight which had no impact on the appointing authority's ability to investigate the appellant's background to evaluate his candidacy.

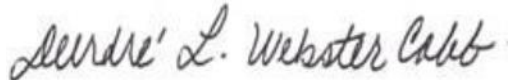
ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the eligible list for Correctional Police Officer (S9988V), Department of Corrections, to be considered for appointment at the next certification, for prospective employment opportunities only.

Further, the Commission orders that should the appellant's name not be certified before the expiration of the Correctional Police Officer (S9988V), Department of Corrections eligible list, the subject eligible list shall be revived so that the appellant may be considered for appointment at the time of the next certification.

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 10th DAY OF SEPTEMBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Kyle Atkins
Lisa Gaffney
Kelly Glenn