STATE OF NEW JERSEY

In the Matter of Robert Sinicropi, Parole Officer Recruit (S1000U), State Parole Board	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2019-2773	:	List Removal Appeal

ISSUED: SEPTEMBER 12, 2019 (SLK)

Robert Sinicropi appeals his removal from the eligible list for Parole Officer Recruit (S1000U), State Parole Board on the basis that he possessed an unsatisfactory background.

The appellant took the open competitive examination for Parole Officer Recruit (S1000U), achieved a passing score, and was ranked on the subsequent eligible list. Initially, on certification OS170555, the appointing authority removed the appellant for an unsatisfactory background. However, in *In the Matter of Robert Sinicropi* (CSC, August 15, 2018), the Civil Service Commission (Commission) restored his name to the list. On a subsequent certification, OS180568, the appointing authority removed his name for an unsatisfactory background[1] and falsification. Regarding the falsification, the appointing authority indicated that the appellant made several inaccurate or false statements on his current employment application. Specifically, the appellant failed to provide all of the details of his detainment at Fort Carson in August 2004 on his 2017 and 2018 applications. He also failed to provide the details when he was interviewed in October 2017. Additionally, the appointing authority stated that it requested this information three times via e-mail during his Fall 2018 background investigation and he failed to provide the requested information as he advised that there was no record of his detainment in August 2004 at Fort Carson.

[1] As the Commission reviewed the appellant's background previously and found it currently satisfactory, it will not consider the appointing authority's request to remove the appellant's name on that basis.

Moreover, the appellant stated that his 2006 charges for possession of marijuana in California were expunged on both his 2017 and 2018 applications.[2] However, when asked to provide the expungement, he was unable to do so and it was not until the appellant was instructed to verify his statements the he found his charges were dismissed and not expunged.[3] Finally, the appointing authority indicated that there were several mischaracterizations and false statements between the answers he provided on his 2017 and 2018 employment applications.

On appeal, regarding the alleged falsification, the appellant acknowledged that he was surprised to learn that his 2006 arrest in California was dismissed, not expunged. He blames the appointing authority's investigator for not doing his or her due diligence and relying on his statement. Additionally, the appellant presents that he contacted Fort Carson to find out if there was any document on his detainment from the prior incident that he disclosed and it did not have information. He believes that he went above and beyond to try to get more information. The appellant asserts that the appointing authority had 45 days to file for reconsideration of the previous matter and did not. He contends that it should not be allowed to submit new evidence in this matter. The appellant states that he is the most qualified candidate on the list as he currently works for the appointing authority as a Parole Counselor. Therefore, he argues that the appointing authority has a pretextual bias against him. The appellant highlights that his background for the past 10 years does not include any license suspensions, driving under the influence, domestic incidents or any other negative interactions with the law. Instead, he has had full-time employment since 2006 and is now married with children. He submits several letters of reference to support his character.

The appellant presents that he was initially removed from the list because he was discharged from the Army in October 2004 for testing positive for cocaine. He received an Under Honorable (general) discharge. This indicated that his service was satisfactory, but his conduct or performance was not so meritorious that it warranted an Honorable Discharge. During the prior investigation, the appellant explained that sometime in early August 2004 he went to a strip club and snorted cocaine off a stripper's breast. Further, in late August 2004, the appellant was drunk while a passenger in a car and during a random drug test, drugs were found in the vehicle. He stated he was handcuffed and detained. The appellant indicated that he was never charged nor did anyone ever speak to him about this incident. Additionally, in January 2006 while in California, the appellant was arrested for possession of marijuana. He indicated that after two years, the charges were expunged. Consequently, the appointing authority removed his name from the list; however, his name was restored by the Commission after an appeal.

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[2] The record indicates that these charges were dismissed after completing a diversionary program.
[3] In his prior appeal to the Commission, the appellant indicated that the 2006 "charge was expunged, and since then, have never used a substance for PTSD."

In response, the appointing authority presents that the evidence in the record indicates that, during the current investigation, the investigator reviewed the appellant's Fall 2017 application and found that he did not accurately include information regarding his military service. Specifically, he initially only included six pages from the Department of the Army's Separation Under AR 635-200, but did not include eight enclosures that this document referenced. The investigator advised the appellant that he needed to supply the enclosures as well as the exact date of the incident as the appellant only indicated that it occurred "sometime in the summer of 2004." Eventually, he submitted the entire document which included 37 pages. The investigator's criminal history check indicated that the appellant had a military charge, dated July 15, 2004, for Wrongful Use of Cocaine and the disposition was Non-Judicial Punishment Under Field Grade Article 15, UCMJ, Forfeiture $597 for two months, reduced from E-3 to E-1, Extra Duty and Restriction for 45 days.

Concerning the second 2004 incident, after reviewing the appellant's 2018 application, the appellant did not include the date that he was detained and there was no copy of the Military Police Report. He indicated that he was "Detained/Drinking at a bar, too drunk to drive, got a ride back, car randomly inspected and found CDS. I was never arrested, charged or reprimanded or written up. My sergeant told me I did the right thing by getting a ride home." The investigator requested paperwork for this incident as well as a copy of the expungement for the 2006 California incident. However, the appellant responded that he did not have any paperwork about being detained in the summer of 2004. He stated that the incident occurred in "either July, August or September" and he was never charged or disciplined for it. The appellant commented that "the way the military works, I would question if there is even any paperwork at all even if I went looking for it at Fort Carson." Additionally, he stated he did not have paperwork regarding his expungement and only that his attorney told him that the incident would be expunged after two years. Thereafter, the investigator discovered that the California incident was dismissed and not expunged.

Subsequently, the investigator contacted the Army's Crime Record Center to seek records concerning the two 2004 incidents. The first incident was reported as occurring on May 18, 2004 and that the appellant pleaded guilty to Wrongful Use of Cocaine and Wrongful Use of Drugs. The investigation revealed that the appellant tested positive for cocaine and also admitted to having consumed Adderall. The punishment was as found during the prior criminal history check. Regarding the second 2004 incident, the offense was listed as occurring on August 21, 2004. The offenses included Wrongful Use of Cocaine, Wrongful Possession of Cocaine, Wrongful Possession of Marijuana, Wrongful Use of Marijuana, Wrongful Use of Dangerous Drugs, Wrongful Possession of Dangerous Drugs and Fail to Obey General Order all in violation of 112A UCMJ. The appellant pleaded guilty to all charges. The investigative summary revealed on August 21, 2004, the appellant along with two other soldiers were in a vehicle owned by one of the other soldiers, was stopped and

searched in a random vehicle inspection at Fort Carson. The search revealed drug paraphernalia, methamphetamines, cocaine and marijuana. The investigation indicated that there was sufficient evidence to prosecute the appellant on all charges and he committed the listed offenses. It also revealed that he verbally confessed to having used marijuana and methamphetamines and he was still under the influence of a controlled substance. In response to the investigator's request for documentation, the appellant replied that the California records were no longer available and his charges were dismissed not expunged. Additionally, he indicated that he contacted Fort Carson and it had no record of his detainment in the summer of 2004.

The appointing authority argues that the appellant should be removed for falsification. Specifically, he did not provide all the details of his detainment in August 2004 on his 2017 and 2018 applications or when interviewed in October 2017. It represents that the investigator requested documentation for these incident on three separate occasions, but he failed to provide it. Instead, he inaccurately claimed that there was no record of his August 2004 detainment at Fort Carson. Additionally, he initially claimed that the 2006 incident in California was expunged and only later did he indicate that the matter had been dismissed and not expunged. The appointing authority argues that the appellant was deceitful during the current application process as he failed to provide accurate and detailed information and made several mischaracterizations. Further, there were several discrepancies between his 2017 and 2018 applications. Specifically, in 2017 on page 12, question 8 he stated, "I was arrested along with them by MP because I was in the car. I don't think anything happened to me as far as punishment from my Commander because I didn't have drugs on me and it was guilt by association." In 2018, he wrote that he was detained. He stated, "I was never arrested, charged, reprimanded or written up. My Sergeant told me I did the right thing by getting a ride home." Similarly, on page 43, question 4, in 2017, he stated that he remembered drinking too much at a bar and getting a ride from other soldiers. He explains that while coming on the base the car was stopped. He stated "the driver had illegal stuff on him and in the truck. I can remember (being) taken into a cell overnight and my Command Sergeant Major picking me up the following morning. I was never disciplined for it. I didn't do anything except get a ride home." In 2018, he stated, "I was detained coming on base in someone else's car. I was detained, not arrested or written up or reprimanded." In 2018, he responded to Page 45, Question 5 by again stating that he was detained, but "never reprimanded, written up, Sergeant picked me up and said I did the right thing by getting ride home." The appointing authority argues that these responses demonstrate his lack of integrity.

In reply, the appellant argues that there is nothing materially different from his 2017 and 2018 applications. He claims that there was no judgment made for the second incident and no legal conclusion was ever made. The appellant contends that he clearly described the incident on his application. He claims that the alleged statements in the Military Police Report are not material facts because there is much

reasonable doubt about anything verbally spoken. The report is missing the appellant's statement that he got a ride back to the base because he was heavily intoxicated from alcohol at a bar and could not drive. He claims that there was no authorized signatures or sanctions showing that there was a judgment of guilt. The appellant reiterates that he was never notified of any charges, never counseled on any charges, and never plead guilty to any charges for the August 21, 2004 incident. The appellant argues that the Military Police Report is hearsay and it should be inadmissible. He argues that he specified all the details concerning the August 2004 incident. The appellant reiterates that he did not have any further information about this incident because there was no due process nor did any judgment exist. He emphasizes that he attempted to get more information from Fort Carson, but it did not have any. Further, he could not get records from the Army Record Center because the appointing authority imposed an October 19, 2018 deadline, which did not leave him time to request the information by mail from the Military Police records. Similarly, the appellant always believed that the California incident was expunged and the fact that the matter was actually dismissed and not expunged is not material. He objects to the characterization that he was deceitful as he answered honestly and as accurately as he could. The appellant presents that there was a form that showed that he was punished for the cocaine incident; however, there is no similar form for the August 2004 incident as there was no adjudication against him. He highlights federal regulations that indicate that an individual should be presumed not guilty of any charge/arrest for which there is no final disposition stated on the record or otherwise determined. The appellant argues that the appointing authority has been acting in bad faith with invidious motivation fabricating a legal conclusion and using that as a basis to remove him. Therefore, he requests immediate appointment, with retroactive back pay and seniority.

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:4-6.3(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, as indicated previously, the Commission has already ruled in its prior decision that the appellant demonstrated that he is sufficiently rehabilitated from the 2004 and 2006 incidents. Further, the appointing authority has not alleged any current issues with his background. As such, the appellant's background is not at issue in this matter.

With respect to the appointing authority's claim that the appellant falsified his 2018 application, which was subsequent to the prior decision, this is a new issue that was not already decided in the prior decision. A review of the appellant's application indicates that page 43, question 4 asks, "Were you ever confined or detained in the brig, stockade, guardhouse or jail while in the military?" The appellant responded, "Yes," and stated, "Please see attached CSC Docket #2018-2891 Appeal. This was the 2004 incident when I was detained coming on base in someone else's car…I was detained, not arrested, or written up or reprimanded." On page 45, question 5, the appellant was asked, "Have you ever been detained, incarcerated, placed into a holding cell or placed into a detox cell, room or area by anyone other than medical personnel for any period of time? If yes, provide the date and circumstance of each instance." The appellant responded, "Yes." He indicated, "As Stated in CSC Docket No# 2018-2891. Detained not arrested coming on to the base passenger in another soldier's car, randomly searched, CDS found. Never reprimanded, written up, sergeant picked me up said I did the right thing by getting a ride home. Summer 2004."

Concerning the August 21, 2004 incident, the Commander's Report of Disciplinary Action indicates that the appellant pled guilty to Fail to Obey General Order, Wrongful Use of Cocaine, Wrongful Possession of Marijuana, Wrongful Possession of Dangerous Drugs, Wrongful Possession of Cocaine, Wrongful Use of Cocaine, and Wrongful Use of Dangerous Drugs. It is noted that the report does not indicate that he was subject to any adverse action or there was any judgement against him. Additionally, the Military Police's memorandum for the incident indicates that the investigation established sufficient evidence to prosecute the appellant. Further, the report indicates that the appellant committed Wrongful Possession and Use of a Controlled Substance and Failure to Obey a General Order, Paraphernalia, where the appellant was a passenger in another soldier's vehicle, which was randomly searched, which revealed drug paraphernalia, methamphetamines, cocaine, and marijuana. Additionally, the appellant subsequently verbally confessed to having used marijuana and methamphetamines. Moreover, the report states that the appellant verbally confessed to the Military Police that he was still under the influence of a controlled substance.

On appeal, the appellant claims that his responses were accurate and he did not in any material way misrepresent this incident. He disputes that he verbally confessed to these charges. The appellant highlights that there is no record that there were formal charges against him or a formal finding of guilt for any of these charges. He also claims that the Military Report should not be admissible as hearsay.

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 matter, even if there was no intent to deceive, the appellant did not accurately describe the circumstances regarding the August 21, 2004 incident. The appellant indicates that he was detained, but not arrested. However, as the appellant was taken into custody by Military Police for possession of drugs, this incident can only be described as an arrest. Further, the report indicates that the appellant pled guilty and confessed to possession and use of controlled dangerous substances. While the appellant denies that he admitted to committing these offenses, the appellant needed to disclose the full nature of the Military Police's investigation, even if he was never formally charged, never received adverse action, or never formally adjudged to have committed these offenses. Further, if the appellant is claiming that he did not know this information because he could not gain access to the Military Police's report or this is not how he remembers the incident, applicants are responsible for the accuracy of their applications. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). It is noted that as the appellant acknowledges that he was drunk, the appellant's characterization of the incident and the investigation is questionable.

Concerning the appellant's argument that the Military Police Report should not be admitted because it is hearsay, even if true, the Commission can generally consider hearsay evidence. Regardless, the Military Police Report is not hearsay as it is what the Military Police concluded based on its own investigation. *See In the Matter of C.L.* (CSC, decided April 19, 2017). The Commission is not using the Military Police Report as a finding that the appellant actually committed or admitted to the alleged offenses. However, the report is evidence of the full nature of the seriousness of the Army's investigation. As such, the Commission finds that the appellant has not given a complete description of the circumstances of the event as asked. Moreover, the lack of a full and accurate description of the matters, especially as to the charges lodged against the appellant, the actual actions taken against him and the actual ultimate disposition of these incidents are clearly material. At the very least, such information was necessary to be accurately disclosed to allow the appointing authority the opportunity to fully consider the appellant's suitability for the position. Additionally, the Commission is disturbed with the appellant's inconsistent descriptions of these incidents. Such inconsistencies cannot be ignored as mere errors of omission and bear on the appellant's candidacy for the position. In this regard, it is recognized that a Parole Officer Recruit is a law enforcement employee who must help keep order and promote adherence to the law. Parole Officer Recruit, like 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 Parole Officer Recruit to present a personal background that exhibits respect for the law and rules.

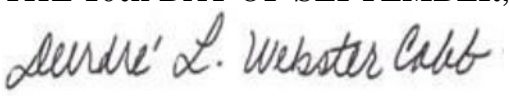
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Parole Officer Recruit (S1000U), State Parole Board eligible list.

ORDER

Therefore, it is ordered that his 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 10th DAY OF SEPTEMBER, 2019



Deirdré 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: Robert Sinicropi
Jacqueline Jobes
Kelly Glenn