



STATE OF NEW JERSEY

In the Matter of R.O., Parole Officer
Recruit (S1000U), State Parole Board

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

CSC Docket No. 2019-2981

List Removal Appeal

Revised Decision

ISSUED: SEPTEMBER 12, 2019 (SLK)

R.O. appeals his removal from the eligible list for Parole Officer Recruit (S1000U), State Parole Board based on an unsatisfactory background report.

The appellant took the open competitive examination for Parole Officer Recruit (S1000U), which had a June 21, 2016 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory background report.

On appeal, the appellant states that he received a finding from the appointing authority that he falsified a document. However, despite several attempts, he never received an explanation from the appointing authority as to what he falsified.

In response, the appointing authority submits its background report. The report indicates that the appellant’s responses triggered several “automatic disqualifications.” Specifically, the appellant acknowledged that he was removed from the employment process with the Port Authority Police Department (Port Authority) and the United States Customs and Border Protection (Customs) for failing to disclose on his 2013 applications his drug use. The appellant explained that he took bad advice from law enforcement employees who advised him not disclose drug history where he was not convicted. However, during the employment process with these agencies, he admitted to using drugs and he was removed for his incorrect answers on his applications. Further, the appellant admitted that he had misused

prescription drugs two times in 2006 and these drugs were not prescribed to him. Additionally, he also used Adderall in 2017, which was not prescribed to him. Moreover, he stated that his past illegal drug consisted of marijuana (2003-2008), cocaine (twice in 2005), ecstasy (twice in 2005), mushrooms (twice overall, 2004 and 2006), and Adderall (once in 2007). The appellant explained that he used Adderall to “take the edge off” while studying in college, the other drugs only a few times recreationally and he never purchased them. The appellant also stated that he lied during his polygraph tests with the Port Authority and/or Customs and he believed that he had lied regarding his drug use with other applications with law enforcement. Further, the appointing authority spoke with the Port Authority and it indicated that the appellant acknowledged during the hiring process with it that he used anabolic steroids (2013 – 2014), used marijuana approximately 1000 times and purchased it approximately 500 times, used cocaine five times and purchased it once and used Percocet approximately 10 times. The appointing authority also noted that the appellant failed to disclose his anabolic steroid use on its application.

In reply, the appellant explains that he applied to the Port Authority and disclosed on his application that he used drugs while in high school and college. Thereafter, he applied to Customs. However, he received bad advice from law enforcement professionals that he should not disclose any drug use that he had not gotten in trouble for. The appellant acknowledges that he foolishly accepted this advise and did not disclose his past drug use to Customs on his application. He states that it was not his intention to be deceitful, but that he was only following advice from individuals who he thought had his best interests in mind. Several years after completing his applications, the interview process began with both organizations. However, he could not remember what he disclosed to each organization. Accordingly, he was removed from consideration from both organizations after discrepancies were discovered during the interview process. Learning from his past mistakes, the appellant claims that he fully disclosed his past drug use on his application with the appointing authority.

Concerning his polygraphs with Customs, the appellant explains that the polygraph test kept indicting that his answers were not accurate. Consequently, the investigator kept asking more specific questions about how many times he used certain substances to have his responses yield a positive result. This resulted in him elevating the amount of times he used substances. The appellant claims that Customs incorrectly characterized what he admitted to using as anabolic steroids. He explains that he advised Customs and the Port Authority that he tried a steroidal-like substance, but he was unclear as to its classification. During the appellant’s self-evaluation period to give accurate information with the appointing authority, he discovered that what he took was a legal pro-hormone compound that could be easily purchased on the internet. Therefore, he chose not to mention it on his application with the appointing authority. The appellant believes that the appointing authority could have contacted him to explain any issues that it had, but it did not. He

contends that it is unfair that the appointing authority removed him for issues with his past applications rather than anything he did wrong during the current process. The appellant presents one of the main reasons that he applied for the subject examination was he wants to help others be given a second chance to make their mistakes right.

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:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove 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.

N.J.A.C. 4A:4-6.3(b) 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's background report indicates that the appellant's responses were grounds for "automatic disqualification," 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 this matter, a review of the appellant's application indicates that he acknowledged using certain illegal drugs or illegal use of prescription drugs for a specified number of times. He also claimed that he never purchased these drugs. The background investigation uncovered that the appellant previously admitted on prior applications with other law enforcement agencies to greater usage of these drugs than currently claimed and he purchased these drugs. On appeal, the appellant attempts to explain the discrepancies between his current and past applications. However, there is no way of knowing which applications were accurate. Therefore, the appellant should have explained to the appointing authority on his application that although he previously admitted to certain drug usage on prior applications, those "admissions" were not accurate. Similarly, the appellant did not disclose his use of a claimed "steroidal-like" substance, which he previously disclosed on prior law enforcement applications. The appellant explains that his "self-evaluation" led him to the conclusion that this substance was a legal pro-hormone compound that could be easily purchased on the internet. Therefore, he concluded that he did not need to

disclose it to the appointing authority. Additionally, he asserts that the other law enforcement agencies from his prior applications incorrectly characterized this substance as an anabolic steroid. However, the appellant is not a physician and the fact that the substance could be easily purchased on the internet does not necessarily mean that it was legal. Instead of fully disclosing this information and explaining it to the appointing authority, he chose not to disclose it.

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, considering the appellant's significant past drug use and inconsistent statements concerning this drug use, his failure to explain the inconsistencies between applications and his failure to disclose the "steroidal-like" substance was material. At minimum, the appointing authority needed this information to have a complete understanding of his background to properly evaluate his candidacy. In this regard, it is recognized that a Parole Officer Recruit is a law enforcement employee who must help keep order and adherence to the law. Parole Officer, 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 Paroles Officers to present a personal background that exhibits respect for the law and rules. 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 Parole Officer Recruit list. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017).

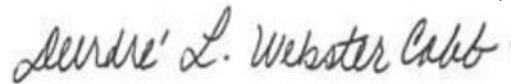
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Parole Officer Recruit (S1000U), State Parole Board eligible list.

ORDER

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



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