



STATE OF NEW JERSEY

In the Matter of Hector Burgos, Jr.,
Sheriff's Officer (S9999U), Hudson
County

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

CSC Docket No. 2019-2035

List Removal Appeals

ISSUED: FEBRUARY 14, 2020 (JET)

Hector Burgos, Jr., appeals the removal of his name from the Sheriff's Officer (S9999U), Hudson County, eligible list on the basis of a falsification of the employment application.

The appellant took the Law Enforcement Examination (LEE) (S9999U),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on June 11, 2018 for Sheriff's Officer in Hudson County (OL180591). In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of falsification of the employment application. Specifically, the appointing authority asserted that in response to the questions on the employment application, the appellant failed to list that he was charged as a juvenile with Burglary, Criminal Attempt, Theft by Unlawful Taking, and Criminal Mischief. Additionally, the appointing authority indicated that the appellant failed to list over 23 motor vehicle infractions on the employment application, and that his driver's license was suspended from June 21, 2012 to July 9, 2012. It is noted that the appellant's official driving abstract reflects the following infractions, including Maintenance of Lamps on February 14, 2011, Failure to Wear a Seat Belt on March 5, 2012, Involved in an Accident – Police Report on June 16, 2012, Parking Offenses Adjudication Act on June 21, 2012 and Unsafe Operation of a Motor Vehicle on April 17, 2017, and that his driver's license and commercial driver's license was suspended from June 21, 2012 through July 9, 2012. The appointing authority also provided a copy of the appellant's records from the Judiciary's Municipal Court Case

¹ It is noted that the S9999U list expired on March 30, 2019.

search program, which reveals that the appellant was involved in 23 vehicle infractions.²

On appeal to the Civil Service Commission (Commission), the appellant asserts that the information provided on his employment application was correct to best of his knowledge. The appellant explains that he does not possess a criminal record and the information submitted by the appointing authority in that regard does not apply to him, as the offenses listed would have occurred when he was four years old. Rather, the appellant contends that the criminal records submitted by the appointing authority are applicable to an individual with a similar name. Additionally, the appellant asserts that his driving record does not reflect 23 motor vehicle infractions. In support, the appellant provides a copy of his juvenile record which confirms that he does not possess a criminal record, and a Motor Vehicle Commission Fee Payment Authorization Form indicating that the appellant's driving record reflects three violations, one accident, and one driver's license suspension.

In response, the appointing authority provides documentation with respect to the appellant's background and motor vehicle record, including his driving abstract and a Municipal Court Case search which includes 23 entries. It does not provide any additional arguments or information in support of its claims.

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 individual from an eligible 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. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998); *In the Matter of Yolanda Colson, Correction Officer Recruit (S9999A), Department of Corrections*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003).

² Many of these appear to be parking violations.

Initially, the appointing authority argues that the appellant falsified the employment application because he failed to disclose that he was arrested in 1991 in response to the questions. However, the appellant states on appeal that the appointing authority's contention that he was arrested in 1991 is incorrect, as he was only four years old at the time the incident occurred, which the appointing authority acknowledges in this matter. As such, since the appellant was not arrested in 1991, he could not have listed such information on the employment application, and accordingly, he would not have falsified the employment application on that basis. Additionally, the appointing authority contends that the appellant failed to list numerous motor vehicle infractions on the employment application. A review of the record reveals that, in response to question 73 on the employment application, "Has your driver's license issued to you ever been suspended or revoked," the appellant checked "no" and signed his initials. In response to question 76 on the employment application, "List any summonses served upon you or any vehicle owned or operated by you by a law enforcement officer, court or other authority for violation of traffic laws, parking enforcement or any other criminal law (include DWI/DUI incident/convictions)," the appellant wrote "n/a" and did not provide any information with respect to his driving infractions. However, a review of the appellant's driving abstract reveals several infractions, including Unsafe Operation of a Motor Vehicle, Parking Offenses Adjudication Act, Involved in an Accident – Police Report, Failure to Wear a Seat Belt, Maintenance of Lamps, and that his driver's and commercial driver's licenses were suspended from June 21, 2012 through July 9, 2012. Moreover, a review of the Municipal Court Case search documentation indicates 23 entries under the appellant's name, including, among other things, obstruction of windshield for vision, maintenance of lamps, overtime meter, no stopping or standing – any street, improper parking within 10 feet of fire hydrant, leaving scene of an accident involving property damage and numerous parking infractions.

It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Police Officer, to ensure that the employment application is a complete and accurate depiction of his history. In this regard, 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 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. 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) (An honest mistake is not an allowable excuse for omitting relevant information from an application).

In this case, the appellant's inaccurate and incomplete responses are sufficient cause to remove his name from the eligible list. It is clear that he failed to disclose material information in his background in response to the questions in the employment application. Such omissions are clearly significant as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Moreover, the documentation the appellant submits on appeal with respect to his motor vehicle record does not confirm that he was not involved with the aforementioned infractions, nor does it refute the appointing authority's contentions that he falsified the employment application. Moreover, he provides no explanation regarding his inaccurate answers to questions 73 and 76 on the employment application.

Additionally, the appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Sheriff's Officer. Such violations evidence disregard for the motor vehicle laws and the exercise of poor judgment. The appellant has offered no substantive explanation for these infractions. In this matter, it is clear that the appellant's driving record shows a pattern of disregard for the law and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Sheriff's Officer. The appellant's motor vehicle history and municipal court documentation reflect that he was involved in numerous incidents and received many infractions, and that his driver's and commercial driver's licenses were suspended from June 21, 2012 through July 9, 2012. The appellant does not provide any substantive evidence on appeal to dispute this information, and the most recent incident, Unsafe Operation of a Motor Vehicle, occurred a little more than a year prior to when his name was certified on the eligible list. The recency of such driving infractions, the relatively large number of infractions and prior suspensions of his driver's license reflect a disregard for the motor vehicle laws and rules, which is unacceptable for a candidate applying for a law enforcement position. It is recognized that Sheriff's 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 Sheriff's Officers to present a personal background that exhibits respect for the law and rules. Accordingly, for the reasons set forth above, the appointing authority has presented sufficient cause to remove the appellant's name from the eligible list for Sheriff's Officer (S9999U), Hudson County.

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 12th DAY OF FEBRUARY, 2020



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