



**STATE OF NEW JERSEY**

In the Matter of Gary Lyons, Jr.,	:	<b>FINAL ADMINISTRATIVE ACTION</b>
Sheriff's Officer (S9999U), Camden	:	<b>OF THE</b>
County Sheriff's Office	:	<b>CIVIL SERVICE COMMISSION</b>
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CSC Docket No. 2020-2398	:	
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	:	List Removal Appeal
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**ISSUED: AUGUST 26, 2020 (SLK)**

Gary Lyons, Jr., represented by Timothy J. Prol, Esq., appeals the decision to remove his name from the Sheriff's Officer (S9999U), Camden County Sheriff's Office, eligible list on the basis of falsification of his application.

The appellant took the open competitive examination for Sheriff's Officer (S9999U), which had an August 31, 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 falsified his application. Specifically, its background report indicated incomplete, omitted, derogatory or false information concerning the appellant's prior address, education, motor vehicle history and employment.

On appeal, the appellant argues that Civil Service regulations require that to be removed from a list for falsification, there must be an intentional act by the eligible. The appellant states that he was truthful, forthcoming and cooperative throughout the application process. Additionally, he indicates that he had a pre-paid "use it or lose it" vacation package for the weekend immediately preceding the application deadline, which also impacted his ability to fill-out his application. Further, he presents that the appointing authority's application indicated that candidates would be rejected for intentionally making a false statement.

Concerning his failure to indicate an address in [REDACTED] where he lived for three months in 2008, as this was where he lived during college he did not perceive this

address as an official “address” which needed to be disclosed. Referring to his attendance at ██████████ in 2009<sup>1</sup>, as the question was referring to colleges and universities and ██████████ is a trade school, his omission was not falsification. Further, as he did not complete extensive study there and withdrew from the program, he states that the recollection of the specifics was as he indicated on his application and he was truthful to his best recollection. Regarding the appellant indicating on his application that he had never been placed on academic probation<sup>2</sup>, he states he was not aware that he had been placed on academic probation following the Spring 2009 semester. With respect to his driving record, he presents that he admitted to six motor vehicle violations between January 7, 2016 and May 13, 2020, as the violations were on the five-year driver’s abstract that he received from the Motor Vehicle Commission. Additionally, he admitted that he pled guilty to a DWI violation in 2012, paid a fine and had his driver’s license suspended even though this incident was not on his five-year abstract, which he submits as evidence that he was trying to be truthful as this incident stood out in his mind. However, the appellant explains that he did not disclose his 10 motor vehicle violations from September 5, 2007 to October 12, 2013, as he did not recall them based on the time that has passed since these incidents and these incidents were not on his five-year abstract. In reference to five failures to appear in court from September 11, 2007 to August 12, 2014 that he did not disclose, the appellant states that when he advised the appointing authority that he omitted these citations because there was no room on the application, he asserts that it is not inconsistent to look at an application and see that it has a certain amount of space and to think there was no more room.<sup>3</sup> Additionally, he indicates that he did not have the information about the failures to appear that were beyond the five-year abstract. He reiterates his belief that his disclosure of the 2012 DWI and all the information on the five-year abstract are evidence that he was trying to be truthful.

Concerning his employment which the appointing authority states that he omitted, these “positions” were pick-up jobs, “gigs” and various odd jobs and side jobs, and not official employment positions. He presents that these were primarily single events where he would wear a T-shirt of a company and take pictures of himself wearing a brand. None of these tasks could be considered a formal job. The appellant argues that there was no intention on his part to deceive the appointing authority and it is inconceivable to suggest that he deceived the appointing authority for failing to disclose a one-day event that took place in 2015 where he was a brand ambassador. Further, he was not being dishonest when he disclosed certain employment, but the dates of the employment were off by a couple of months as he disclosed this employment to the best

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<sup>1</sup> The background report indicates that the appellant stated he registered for one computer class and “dropped” the class before the end of the semester. However, the investigation revealed that he completed five courses in the second and third terms of 2009 and registered for two additional classes. Further, he failed one class and withdrew from the other. The appellant omitted his attendance at ██████████ on his application.

<sup>2</sup> The background report indicates that his official transcript from ██████████ ██████████ states that he was placed on probation following the Spring 2009 semester.

<sup>3</sup> The background report indicates that candidates were advised that if there was insufficient space, use the continuation pages included and precede each answer with the corresponding letter and number of the question being answered.

of his recollection. The appellant argues that the appointing authority's actions were arbitrary and capricious. He requests that if the Civil Service Commission (Commission) does not grant his appeal, the matter be referred to the Office of Administrative Law for a hearing.

In response, the appointing authority, represented by Ilene M. Lampitt, Assistant County Counsel, concerning the appellant's omission of a prior residence, his employment record, his unemployment record and academic probation, presents that a law enforcement officer must have the ability to recall a series of events and locations or take the initiative to research it and such failure will negatively affect investigations, reports, charges and prosecutions. Additionally, while the appellant may have made honest mistakes about these matters, it highlights that the appellant had eight days to research his record. The appointing authority contends that the appellant's failure to disclose his college academic probation, which was on his official transcript, was a false statement. Regarding his motor vehicle record, the appointing authority argues that the appellant's five failures to appear in court are contrary to how a law enforcement officer should conduct oneself and he also failed to follow instructions. Further, the appellant read on the application that he could use the continuation pages included if he ran out of space. Therefore, it contends that the appellant admits that he knew about these failures to appear, but chose not to disclose them. Further, the appellant's extensive negative driving history could potentially impact his ability to testify in court and be called into question during litigation and internal investigations. Additionally, his driving history could render the appointing authority culpable for allowing an officer with such a history to operate an emergency vehicle. Therefore, the appointing authority argues that the appellant's background and his failure to completely disclose his background does not meet the high standards for a law enforcement position and its removal of his name from the list was not arbitrary, capricious or unreasonable.

## 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.

The primary inquiry regarding the removal of a candidate's name based on the falsification of his or her employment application 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. See *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003).

Initially, referring to the appellant's statement that the appointing authority indicated on its application that a candidate would be rejected for intentionally making a false statement, it is the Commission, and not the appointing authority that sets the standard for removal from an eligible list. *See In the Matter of Joseph Hutsebaut* (CSC, decided April 19, 2017)

In this matter, the appointing authority had a valid reason for removing the appellant's name from the list. Concerning the appellant's academic record, the appellant claims that he did not disclose that he was placed on academic probation by [REDACTED] because he was unaware that this was done. However, this information was indicated on his transcript. Regardless, candidates are responsible for the accuracy of their applications. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Additionally, having a pre-paid vacation or other plans during the time to fill-out one's employment application is not a valid excuse for submitting an application with omitted, incomplete or inaccurate information. Further, while the appellant may not have needed to disclose his enrollment at [REDACTED] on his application when he was asked about colleges and universities as it is a trade school, the record indicates that when the appellant was asked about his enrollment there, he indicated that in 2009 he registered for one computer class and "dropped" the class before the end of the semester. However, the appointing authority's investigation revealed that in 2009, he completed five courses, registered for two additional classes, failed one class and withdrew from another. While it is conceivable that the appellant did not remember every detail of his attendance at [REDACTED], it is not believable that the appellant did not remember that he registered and took more than one class based on this record. Therefore, it is not unreasonable to conclude that the appellant was purposely not disclosing his complete academic record.

Concerning the appellant's driving history, the record indicates that between September 5, 2007 and January 7, 2016, he had 16 motor vehicle violations, pled guilty to DWI which led to a fine and a driver's license suspension, and had five failures to appear in court between September 11, 2007 and August 12, 2014. The appellant explains that he did not disclose 10 motor vehicle violations because he did not recall them as they were not disclosed on his five-year driver's abstract. Initially, it is noted that the appellant has not provided any explanation as to why he did not order a complete driver's abstract. Further, the appellant explains that he did not disclose all of his failures to appear in court because they did not appear on his five-year driver's abstract, he could not recall the information and he ran out of room on the application. Regarding his excuse that he ran out of room on his application, the application clearly indicated that he could use the continuation pages to include further information. Moreover, even if he did not realize this or did not understand these directions, it is inconceivable that the appellant did not think that the appointing authority did not need to know this information and that a lack of room on the application would be an acceptable reason not to disclose this information. If

he truly did not know where he should have disclosed this information because he ran out of room, he should have asked the appointing authority. Additionally, as stated above concerning the non-disclosed motor vehicle violations and failures to appear, the appellant is responsible for the accuracy of his application. *See Hunter, supra.*

Furthermore, even if there was no intent to deceive, as the last motor vehicle violation occurred in January 2016, less than one year prior to the August 31, 2016 closing date and the last failure to appear occurred in August 2014 approximately two years prior to the closing date, his failure to disclose his entire motor vehicle-related history was material. At minimum, the appointing authority needed this information to have a complete understanding of his background in order to properly evaluate his candidacy. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). In this regard, it is recognized that a Sheriff's Officer is a law enforcement employee who must help keep order and promote adherence to the law. Sheriff's Officers, like 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 Sheriff's Officers 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 Sheriff's Officer (S9999U), Camden County Sheriff's Office, 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 19<sup>TH</sup> DAY OF AUGUST 2020

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries

and  
Correspondence

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

c: Gary Lyons, Jr.  
Timothy J. Prol, Esq.  
Gilbert L. Wilson, Sheriff  
Ilene M. Lampitt, Assistant County Counsel  
Agency Services  
Records Center