

B-12



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matters of Lawrence Jenkins,
Correction Officer Recruit (S9988R)
and (S9988T), Department of
Corrections

List Removal Appeals

CSC Docket Nos. 2016-3712 and
2016-3939

ISSUED: **JAN 24 2017** (HS)

Lawrence Jenkins appeals the appointing authority's determinations to remove his name from the Correction Officer Recruit (S9988R) and (S9988T) eligible lists based on an unsatisfactory background report and falsification of his preemployment application. These appeals have been consolidated due to common issues presented.

The appellant's name appeared on the subject eligible lists.¹ In disposing of the certification from the S9988R list in April 2015, the appointing authority removed the appellant's name, contending in pertinent part that he had an unsatisfactory background report and falsified his preemployment application. Specifically, the appellant was charged on November 15, 2012 with obstructing administration of law or other governmental function in violation of *N.J.S.A. 2C:29-1a*, which was dismissed on March 6, 2013, but failed to disclose this charge on his preemployment application. Upon being notified of the charge and his failure to disclose, the appellant responded that he had never been arrested and the case "is definitely a case of mistaken identity." The appellant was then provided with the complaint number and court code, and he later responded that he "did not know that this misunderstanding that was dismissed would be something that would further need my attention or show up on my record." In support, the appointing authority submitted copies of the appellant's S9988R preemployment application

¹ It is noted that the S9988R list expired on July 22, 2015 and the S9988T list promulgated on July 23, 2015 and expires on July 22, 2017.

dated January 24, 2015, documentation from the New Jersey Automated Complaint System and e-mail correspondence with the appellant.²

In disposing of the certification from the S9988T list in April 2016, the appointing authority removed the appellant's name, contending that he falsified his preemployment application. Specifically, and in pertinent part, the appellant again failed to disclose the above-noted 2012 charge of obstructing administration of law or other governmental function on his preemployment application. In support, the appointing authority submitted a copy of the appellant's S9988T preemployment application dated October 23, 2015,³ among other documents.

On appeal to the Civil Service Commission (Commission), the appellant states, with respect to the S9988R list, that he did address the obstruction ticket at issue and reiterates that the ticket was a case of mistaken identity. He did not know that he had to get a disposition and did not realize that the ticket was something that would be on his record. When the appointing authority contacted him about the charge, he immediately went to the court to find out what the matter was about. He purchased the audio of the court appearance and the disposition, which he provided to the appointing authority.

With respect to the S9988T list, the appellant claims that he did address the obstruction ticket at issue. In this regard, he advised the appointing authority of the charge at issue and became knowledgeable of it during the application process "the first time [he] applied for this position and was denied." Specifically, he provided the court disposition, the ticket and the audio of the court appearance to the appointing authority in February 2015. He claims that he had no reason to purposely attempt to hide this information a second time knowing that it was an issue that would come up and have to be addressed. The appellant contends that he was not trying to hide this incident because in response to Question 13 on his S9988T application, "Do you currently have any appeals pending with the Civil Service Commission, law enforcement agency, or the Merit System Board as a result of the dismissal or refusal of employment?" he checked "Yes" and wrote, "I knew nothing about a ticket that I needed a court disposition for." The appellant also claims that he did not answer Question 54 on his S9988T application, "Have you ever been ticketed, arrested or charged with a violation of a city or local ordinance of the Disorderly Persons Offense Act?" because he did not know the correct way to answer it from home. He claims that when he met with the appointing authority to go over his S9988T application, he brought the unanswered

² The appellant appealed the removal of his name from the S9988R list to the Division of Agency Services stating, among other things, that he received a ticket in the mail and had no knowledge of why the ticket was issued. The appellant stated that he did not include an arrest record as no arrest took place. The appellant also stated that upon going to court, the case was dismissed due to mistaken identity. The Division of Agency Services denied the appeal in April 2016.

³ It is noted that both the S9988R and S9988T preemployment applications instructed applicants to "include all charges regardless if discharged under any diversion program or dismissed."

question to the attention of the officer and explained the situation and the pending appeal⁴ to him. According to the appellant, the officer advised that it was okay to leave the question blank. The appellant questions why the officer did not advise him to answer the question, if it was an issue. The appellant further claims that he provided the appointing authority with copies of the ticket and disposition on the day he met with the officer.

The appointing authority argues that the preemployment application provides clear and explicit instructions as to what must be disclosed and defines all terms to ensure that candidates are aware of what information must be disclosed. The appointing authority maintains that the appellant was charged in 2012 with obstructing administration of law or other governmental function in violation of *N.J.S.A. 2C:29-1a* and that he failed to disclose this charge on his preemployment applications as required. In response to the appellant's contention that he did not falsify his S9988T application because he submitted information concerning the charge in February 2015, the appointing authority notes that that information was provided in connection with his application for the now-expired S9988R list and that he did not provide the information until it was asked of him later in the preemployment process. The appointing authority maintains that applicants must disclose all charges every time that they apply.

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 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 name from an eligible list was in error.

A review of the record indicates that the appellant was charged with obstructing administration of law or other governmental function in violation of *N.J.S.A. 2C:29-1a* in 2012 and that the appellant failed to disclose that information on his S9988R and S9988T preemployment applications respectively. Regarding the S9988R list, the appellant claimed that he did not know that this dismissed charge was something that would further need his attention or show up on his record. However, the application clearly instructed applicants to disclose all charges, even if dismissed. The appellant's response under Question 13 on his S9988T application that he "knew nothing about a ticket that [he] needed a court disposition for" is not adequate as a disclosure of the charge. In addition, the appellant's argument that he did not falsify his S9988T application since he

⁴ At the time the appellant prepared his S9988T application, his appeal of the removal of his name from the S9988R list was pending in the Division of Agency Services.

provided information concerning the charge in February 2015 is similarly unpersuasive. As noted by the appointing authority, that information was provided in connection with the appellant's application for the now-expired S9988R list and only after it was asked of him later in the preemployment process. It was still the appellant's burden to provide a preemployment application for the S9988T list that was accurate and complete. The appellant cannot shift this burden by merely claiming that he provided the information in connection with a previous application. It is not the appointing authority's responsibility to fill in missing information. Rather, it must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correction Officer Recruit, to ensure that his employment applications are 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 applications for employment and risks omitting or forgetting any information at his 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 omissions are sufficient cause to remove his name from the eligible lists. The appellant failed to disclose this information on his applications, where the instructions clearly indicated that applicants were required to disclose all charges even if dismissed. The appellant's additional claims with respect to the S9988T list that an officer with the appointing authority allowed him to leave Question 54 blank and that he provided the appointing authority with copies of the ticket and disposition on the day he met with the officer are unsubstantiated. The type of omissions presented is clearly significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Indeed, an appointing authority's assessment of a prospective employee could be influenced by such a charge, especially for a position in law enforcement. Therefore, the information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his employment applications. The appellant's failure to disclose the information is indicative of his questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correction Officer Recruit. In this regard, the Commission notes that a Correction Officer Recruit is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the image of utmost

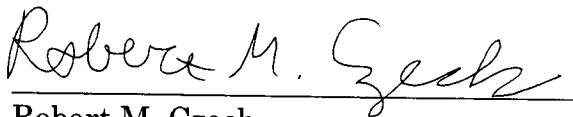
confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects prison guards to present a personal background that exhibits respect for the law and rules. Accordingly, there is a sufficient basis to remove the appellant's name from the subject eligible lists.

ORDER

Therefore, it is ordered that these appeals 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 18TH DAY OF JANUARY, 2017



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