



STATE OF NEW JERSEY

In the Matter of Miguel Valdera,  
Fire Fighter (M1583T), Winslow  
Township

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-1684

List Removal Appeal

ISSUED: OCT 06 2017 (JET)

Miguel Valdera, represented by Joel S. Rosenberg, Esq., appeals the removal of his name from the Fire Fighter (M1583T), Winslow Township, eligible list, on the basis of falsification of his employment application.

The appellant, a veteran, took the open competitive examination for Fire Fighter (M1583T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on March 11, 2016. 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 the appellant responded "no" to question 1.12 on his application which asks, "Have you ever been involved in a Domestic Violence incident?" However, in its background report, the investigating Police Officer found "in December 2014 the applicant had several Domestic Violence incidents with his ex-wife." The report also indicated that none of the incidents were physical in nature, but a Temporary Restraining Order was signed against the appellant which was later dismissed.

Thereafter, on November 21, 2016, the appellant appealed the matter of his removal from the list to the Civil Service Commission (Commission). By letter dated January 31, 2017, staff from the Division of Appeals and Regulatory Affairs (DARA) advised the appellant that the record demonstrated that he falsified material information on his application and he did not demonstrate a basis to restore his name to the list. The appellant filed an appeal of this correspondence to the Appellate Division on March 16, 2017. However, by letter dated April 14, 2017,

the appellant requested his case be reopened and reviewed by the Commission. Accordingly, DARA reopened the case and by letter dated May 12, 2017 provided the parties the opportunity to supplement the record with any arguments they wanted the Commission to consider in this matter. As he requested the Commission to reopen his case on April 14, 2017, the appellant filed a motion with the court to remand the matter.

On appeal to the Commission, the appellant asserts that there were no domestic violence complaints or any violence involving himself and his ex-wife, which was confirmed by the appointing authority's background investigator. The appellant explains that on December 6, 2014, his ex-wife had vandalized and removed property from his residence due to her mistaken belief that he had taken her wedding ring. The appellant adds that, in response to a complaint that he filed, his ex-wife returned to his residence with a Police Officer and returned the items that were taken. Further, the appellant contends that, in response to the December 6, 2014 incident, he filed a TRO against his ex-wife, and subsequently, his ex-wife filed a TRO against him. The appellant avers that, by way of a consent order dated December 15, 2014, the TROs were dismissed. The appellant states that, since no violence occurred and there were no allegations of violence between himself and his ex-wife at the time of the incident, he did not list such information on the employment application. Moreover, the appellant asserts question 1.12 on the employment application is ambiguous and unclear, and his response to the question should be considered as a misunderstanding of the question.

In response, the appointing authority, represented by Elizabeth M. Garcia, Esq., asserts that the appellant's appeal is untimely, as he had 45 days to submit a request to re-open his matter in response to the January 31, 2017 letter. Rather, he filed an appeal with the Appellate Division prior to obtaining a decision from the Commission. As such, his appeal should be denied.

## 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 for the removal 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 an appointment.

Initially, the appellant's appeal was timely received by this agency for review. In this regard, the appellant was notified by this agency that the appointing

authority requested the removal of his name from the list on or about November 9, 2016. Thus, his appeal of that action postmarked November 21, 2016 is clearly within the 20-day time frame. Although DARA initially advised the appellant that there was no basis to continue his appeal by letter dated January 31, 2017, he responded that he wanted his case reopened for Commission review on April 14, 2017. As the January 31, 2017 letter from DARA was **not** a final administrative action by the Commission, the appellant was entitled to request the matter be reopened for review. As such, the timeliness of this appeal is not at issue and the Commission will now address the appellant's contentions.

In the instant matter, the appointing authority argues that the appellant did not disclose the TRO on the employment application. In response to question 1.12 on the employment application, "Have you even been involved in a Domestic Violence incident," the appellant answered "No." In *In the Matter of Nicholas D'Alessio, Docket No. A-3901-01T3 (App. Div. September 2, 2003)*, in falsification cases, the court 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. Based on the submissions from the appellant, there is no substantive information to confirm that he was charged with a Domestic Violence offense. Rather, the record reflects that a TRO was issued against him for reasons other than a Domestic Violence offense as defined by *N.J.S.A. 2C:25-19(a)*, which was subsequently dismissed. Given that there is no substantive evidence that the appellant was involved in a Domestic Violence incident, as well as the fact that question 1.12 only required him to list any involvement in a Domestic Violence incident, he was not obligated to list the TRO in response to the question on the employment application.

In this case, given the circumstances presented by the appellant, it is doubtful than any employer, including a public safety agency, would find the one-time TRO to reflect adversely on his character rendering an unsuitable candidate for employment. This finding is also bolstered by the fact that the appellant explained the incident in detail in his appeal submissions. Moreover, the appointing authority has not provided any substantive information in this matter to refute the appellant's explanation regarding the TRO. While an applicant is responsible for the accuracy of his or her answers on an employment application, so too is an appointing authority responsible for presenting clear and unambiguous questions on the application. If the appointing authority was seeking to determine whether the appellant had any previous restraining orders, it should have asked that question directly on the application. Where, as here, the TRO did not actually implicate "domestic violence," it cannot be said that the appellant falsified his application in failing to list that matter in response to the question presented. Therefore, the Commission finds that the appellant did not falsify his application.

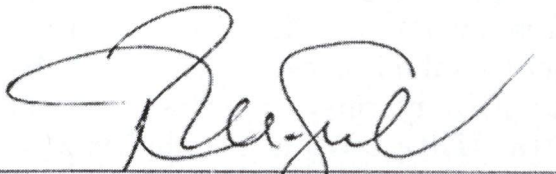
Accordingly, given the position at issue and in consideration of the totality of the circumstances, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Fire Fighter (M1583T), Winslow Township. Further, personnel records indicate that a current certification (OL171080) has been issued from the subject list. As the appellant is a veteran, the Commission orders that his name be added to that certification and, absent any further reason for his removal from the list after an updated background check, he receive an appointment. Moreover, should he successfully complete his working test period, he should receive a retroactive appointment date of November 7, 2016, for salary step placement and seniority purposes only.

### ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be added to certification OL171080 and, absent any further reason for his removal from the list after an updated background check, he receive an appointment. Moreover, should he successfully complete his working test period, he should receive a retroactive appointment date of November 7, 2016, for salary step placement and seniority purposes only.

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 4<sup>th</sup> DAY OF OCTOBER, 2017



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