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STATE OF NEW JERSEY

In the Matter of Sesily Aponte,
Correction Officer Recruit (S9988T),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-3269

List Removal Appeal

ISSUED: FEB 24 2017 (JET)

Sesily Aponte appeals the removal of her name from the Correction Officer Recruit (S9988T), Department of Corrections eligible list on the basis of an unsatisfactory background report, an unsatisfactory employment record, and falsification of the employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on July 22, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory background report, an unsatisfactory employment background, and falsification of the employment application. Specifically, the appointing authority asserted that the appellant has several tattoos that resemble known gang tattoos. It also stated that the appellant received a reprimand while employed at Forman Mills in 2013. It also indicated that the employment dates provided by the appellant on the chronological data sheet did not match the employment dates listed on the employment application. Finally, the appointing authority asserted that the appellant failed to disclose that she was a plaintiff in a temporary restraining order (TRO) case.

On appeal, the appellant maintains that her name should be restored to the eligible list. Specifically, the appellant asserts that none of her tattoos resemble gang tattoos. She explains that she has a total of 10 tattoos, and they are not located on her hands, face, or neck. The appellant adds that she reviewed the appointing authority's tattoo policy and did not find any information to confirm that

her tattoos violate the policy. In addition, the appellant contends that she is not involved with any gang affiliations, and the signs depicted in pictures on social media sites are not gang related. The appellant states that, although she uses social media sites including Facebook, she does not acquaint herself with the majority of users and she cannot control what they post. The appellant acknowledges that, while she has two siblings who have gang affiliation, she only affiliates with her family during holidays and special events. Moreover, the appellant explains that her brother recently passed away and his membership in a gang did not contribute to his death.

Additionally, the appellant asserts that she disclosed to the appointing authority that, while employed at Forman Mills in 2013, she was reprimanded for lateness. The appellant explains that, in January 2013, she discovered that she was pregnant, and was authorized out of work in May 2013 due to a high risk pregnancy. She adds that her child was born premature with minor health issues. Further, the appellant contends that, although her immediate supervisor allowed her to return to work at Forman Mills, the Human Resource supervisor insisted that she receive a letter of reprimand. The appellant adds that she did not file for a TRO. Rather, she was residing with her mother who filed for the TRO. The appellant states that she was unaware of her mother's actions pertaining to the restraining order, and such information only came to her attention in this matter.

In support, the appellant provides pictures of her tattoos that were reviewed by the appointing authority. Specifically, she provides copies of her rabbit tattoos, as well as a copy of the rabbit image that influenced the tattoos. She explains that there is a white rabbit tattoo located on the top of her left foot, and a black rabbit tattoo located on the top of her right foot. She avers that the tattoos are depicted with a five-point star, which she claims represents a flower, and the tattoos symbolize the year she was born according to Chinese astrology. Additionally, the appellant provides a copy of a picture of a laugh/cry tattoo which is located on the right side of her lower abdomen that depicts two masks with strings attached. There is a hand on the side of the happy mask that is holding a flower, and there is a hand on the side of the sad mask that is holding a handkerchief. The appellant explains that the tattoo represents an abusive relationship that she was involved in. She also provides several other pictures of her tattoos without any explanations for them. A review of these pictures reveal, among other things, large tattoos including a stop watch with Roman numerals and a flower located on her left upper arm and shoulder, large flowers with various designs located on her back, and the word "Madeline" located on her left side. Additionally, the appellant provided an undated letter from Madeline Perez, who indicates that the appellant is her daughter, and she pursued filing a TRO on her daughter's behalf. The appellant also provides a letter of recommendation from Jonathan Turner, Director of Distribution at Forman Mills.

In response, the appointing authority maintains that the appellant's name should be removed from the eligible list. Specifically, the appointing authority asserts that the appellant's background adversely relates to the employment sought. Further, the appointing authority states that the appellant misrepresented information on the employment application, during her interview, and on the chronological data sheet pertaining to her employment history and the TRO. The appointing authority adds that the employment application lists criteria it requires for the selection process, and the appellant initialed each page of the application. As such, the misrepresentations are sufficient to remove her name from the list. Moreover, the appointing authority contends that its goals and objectives are to appoint candidates who exhibit respect for the law in order to effectively manage the day-to-day operations of a prison system.

In support, the appointing authority submits a memorandum from the background investigator, who explains that the appellant has several tattoos that are consistent with known gang tattoos. The investigator asserts that the appellant has a rabbit tattoo with five pointed stars and a tattoo indicating "laugh now cry later," which are consistent with known gang tattoos. Further, the investigator asserts that the appellant's social media accounts show pictures of her posing with individuals using known gang signs. The investigator adds that the appellant provided a written statement to the appointing authority acknowledging that she was depicted making a five-pointed star "Blood" hand sign with two people in a picture, and several photos of her family members are shown using known gang signs. Moreover, the investigator avers that, although the appellant states on appeal that her brother's death was not gang related, the chronological data sheet she provided indicates that the incident remains an unsolved murder.

Additionally, the investigator asserts that the appellant failed to disclose that she filed for a TRO. The investigator explains that the TRO was issued on April 8, 2006 and dismissed on April 13, 2006. The investigator adds that, although the appellant stated at the time of her interview that her mother filed for the TRO because she was a minor, the appellant was in fact 18 years old at the time in April 2006. Additionally, the investigator avers that the dates of employment listed on the appellant's application do not match the dates provided in the candidate chronological data sheet. In this regard, the chronological data sheet indicates that she was unemployed from May 2010 to May 2012 because she was attending college. However, the application states that she received unemployment benefits during that time and there is no record of any colleges listed on her application. Moreover, the investigator asserts that the investigation revealed that the appellant was reprimanded for 14 incidents of lateness in 2013 while employed at Foreman Mills.

The appointing authority provides copies of the appellant's tattoos of the rabbits with the five-pointed stars and her pictures from various social media sites.

In this regard, one picture shows the appellant standing with two female individuals, one of whom has six stars tattooed on her chest; and another image of her standing with two male individuals, who are extending their right hands to each other and exhibiting a sign with their thumbs pointed upward at an angle, and their index and small fingers pointed outward with their middle and ring fingers closed. The appointing authority maintains that this action symbolizes the two-hand five-star "Blood" gang affiliation. The appointing authority also submits other pictures of individuals found on the appellant's social media sites who have their hands extended at an angle and are exhibiting hand gestures with their index and small fingers extended upward.

It is noted that, on her candidate statement, the appellant indicated, "In picture #1, I, [the appellant], am located in the middle of the picture. My brother on the far left and his friend on the far right are showing a 2 hand 5 point star "blood sign. This picture was taken in December 2009 in Camden. I am no longer associated with either individual."

CONCLUSION

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. *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 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 process.

In the instant matter, it is clear that the appellant's name should be removed from the subject list. Initially, the investigation confirmed that her pictures displayed on social media accounts matched the depictions of gang-related activity. The appellant has not provided any substantive information to refute the findings of the law enforcement officials who conducted the background investigation. Additionally, recognizing the nature of the position at issue, the posts on her social media sites admittedly depicting the appellant posing with known gang members and demonstrating hand gestures known to be Blood gang symbols, demonstrates that the appellant's background should not make her eligible for an appointment. In this regard, the appellant admits in her candidate statement that she was depicted in a picture with other individuals who were making a five-pointed star "Blood" hand sign. Based on the appellant's admission in her candidate statement, the Commission is persuaded that the hand signs displayed in the pictures are associated with gang-related activity. In fact, the appellant clearly acknowledges on appeal that her siblings were and still are involved in gang related activity.

Although the appellant states that she no longer has any involvement with such individuals, she has not provided any substantive evidence to show that she no longer has any association with these individuals. Her involvement in such activity recently occurred and cannot be ignored. Moreover, the appellant has not provided any conclusive information to refute the appointing authority's argument to show that her tattoos are not associated with gang-related activity.

Other than the appellant's explanation that she is not responsible for what other people post on social media sites, she does not substantively dispute the claims that the images show her with known gang members. Moreover, given the totality of the evidence in the record, it is highly unlikely that the appellant was not aware that her tattoos, gestures and associations touched on gang culture. Such activity is not acceptable for an individual seeking a position as a Correction Officer Recruit.

Additionally, the appellant has not conclusively established that she did not falsify her employment application. The appellant's selective disclosures about her affiliations with gang members and her involvement with the pictures depicting gang activity on social media accounts evidence an intent to deceive the appointing authority. Based on the evidence, her argument that she no longer has involvement with such individuals is not credible. Further, in response to question #55 on the employment application, "Have you ever been a plaintiff, a defendant or involved in any act of domestic violence in this or any other state," the appellant marked, "No." Although the appellant states that she was unaware of the matter because her mother pursued the TRO, 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 or her 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 omissions are sufficient cause to remove her name from the eligible list. The types of omissions presented are 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. As such, it is clear that the appellant did not properly provide information in response to the questions on the

employment application. The information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his employment application. Further, the images, activity and language she utilized on social media are indicative of her questionable judgment. 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 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 prison guards to present a personal background that exhibits respect for the law and rules. The appellant's behavior is inimical to that goal. Clearly, a failure to disclose material information about ties to gang members and attempts to deceive the appointing authority about such affiliations reflect poorly upon the appellant's ability to meet the standards of conduct expected of a Correction Officer. As such, there is a sufficient basis to remove the appellant's name from the list.

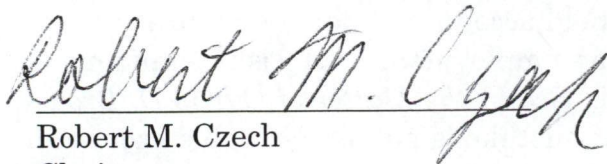
Since the appellant's name has been removed from the list for the above noted reasons, it is unnecessary to address the issue of her unsatisfactory employment record.

Accordingly, based on the totality of the record, the appointing authority has submitted sufficient evidence to support the removal of the appellant's name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections.

ORDER

Therefore, it is ordered that this matter be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22nd DAY OF FEBRUARY, 2017



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Attachment

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