



B-3

STATE OF NEW JERSEY

In the Matter of Dennis Feliciano,
Jr., Sheriff's Officer (S9999R), Essex
County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-55

List Removal Appeal

ISSUED: FEB 24 2017 (SLK)

Dennis Feliciano, Jr., represented by Jeffrey J. Berezny, Esq., appeals the attached determination of the Division of Agency Services (Agency Services) upholding the removal of his name from the eligible list for Sheriff's Officer (S9999R), Essex County, on the basis that he falsified his application and possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Sheriff's Officer (S9999R), 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, it represented that in response to Question 30 on his application, asking if he had ever filed for bankruptcy or had a wage garnishment or judgment held against him, he answered that he filed for bankruptcy, but failed to list 5 records found in the Judgement/Lien section of the LexisNexis report. Further, in response to Question 34 asking if had ever been arrested for or charged as a juvenile in New Jersey or any other state, he failed to list that he was charged with Aggravated Sexual Assault as a juvenile in 1995. Moreover, in response to Question 47 asking if he had ever had his driver's license suspended, he failed to list 1 of his 3 suspensions. Additionally, the appointing authority presented that he was charged with Improper Behavior and Resisting Arrest in September 2004, charged with Domestic Violence in January 2012 and a Temporary Restraining Order was granted

to the victim against him in July 2013, and was arrested for Simple Assault in July 2013. It is noted that all of the charges against the appellant were dismissed.

On appeal, the appellant presents that he listed that he filed for bankruptcy and stated that he defaulted on his credit cards. He highlights that the LexisNexis report only lists 3 judgments and not 5 judgments as the appointing authority represents. Further, the appellant states that 2 of the 3 judgments were for \$500 or less and they were listed as underlying debts that were disclosed as part of his bankruptcy. Moreover, the third judgment was not a money judgment, but was part of a landlord-tenant proceeding which he was neither served nor aware as he believes this was a proceeding against a former roommate after he vacated the premises. Additionally, the appellant indicates that he was not aware of the juvenile charge for Aggravated Sexual Assault as this incident allegedly took place when he was 11 years old. He explains that he was never made aware of this incident as there was an allegation of abuse involving his little sister, which later led to the actual suspect being an outside adult. The appellant reiterates that his family did not tell him about this incident to protect his childhood innocence. He argues that he did not knowingly make a false statement of any material fact.

Additionally, the appellant argues that he does not have a criminal background that merits removal. Specifically, he reiterates that the juvenile charge was 23 years ago when he was 11 years old and he was innocent. The appellant states that the Improper Behavior and Resisting Arresting charges were disorderly persons offenses, which are the least serious crimes in New Jersey. He contends that this arrest was based upon a mistaken identity and was dismissed after another suspect confessed and admitted that the appellant was innocent. The appellant explains that his fiancé filed false domestic violence charges against him and he attaches a certification from her stating that he was innocent. He believes that these incidents should be considered isolated events since he was innocent and has not been involved in the criminal justice system. The appellant highlights his employment history, his college credits, his letters of recommendation, and represents that he is a dedicated family man.

In response, the appointing authority indicates that the appellant did not list all of his judgments/liens on his LexisNexis report, did not list his juvenile charge, and failed to list one of his three driver's license suspensions. It asserts that even though the charges against the appellant have been dismissed, his criminal history is unsatisfactory for a position as a Sheriff's Officer.

In reply, with respect to the appellant driver's license being suspended, he certifies that he did disclose that his license was suspended in 1999 for failure to appear for improper passing and in 2006 for non-payment of an insurance surcharge. He explains that he failed to appear due to a scheduling mishap as he did not receive a court notice due to his change of residence. The appellant represents that it was an

immaterial oversight on his part to not list his September 2003 driver's license suspension for non-payment of an insurance surcharge as he must have unintentionally missed this while viewing his driver's abstract. He asserts that he has not had a moving violation summons in the past 10 years.

In summary, the appellant states the he neither intended to deceive nor failed to disclose any material fact. He contends, at worst, that he inadvertently omitted some trivial detailed specifics on his application, but as a whole sufficiently answered all questions. The appellant indicates that he provided documentation and certifications confirming that all of his prior arrests were merely unfortunate or non-serious and all charges were dismissed.

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 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 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).

N.J.S.A. 11A:4-11 and *N.J.A.C. 4A:4-4.7(a)4* provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A. 11A:4-11*. See *Tharpe v. City of Newark Police Department*, 261 N.J. Super. 401 (App. Div. 1992).

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 Civil Service 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.

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.

In the instant matter, the appellant's background clearly provides a basis for removal from the subject list. The appellant was arrested in 2004 for Improper Behavior and Resisting Arrest. Thereafter, in 2012 and 2013, he was charged with domestic violence. Additionally, the appellant acknowledged that his license was suspended 3 times. While the appellant attempts to explain that the 2004 incident was a case of mistaken identity and his fiancé certifies that she filed two separate false domestic violence charges against the appellant, the appellant has not adequately explained why his driver's license was suspended 3 times. Further, a review of the appellant's driver's abstract indicates that he was charged with improper passing and failure to appear in 1999, obstructing passage of other vehicle and unsafe operation of a motor vehicle in 2000, unsafe operation of a motor vehicle and careless driving in 2001, non-payment of insurance surcharge and operating a motor vehicle with suspended or revoked license in 2003, and non-payment of insurance surcharge and obstructing passage of other vehicle in 2006. In other words, throughout the appellant's life, including as recently as 2013, the appellant has had adverse encounters with law enforcement and the court system. In this regard, it is noted that the closing date of the subject examination was May 1, 2014.

The appellant's multiple adverse encounters with law enforcement and the court system demonstrate his questionable judgment, which is unacceptable for applicants who seek positions in law enforcement. The public expects Sheriff's Officers to present a personal background that exhibits respect for the law and rules. In this regard, the Commission is mindful 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).

Additionally, the appellant acknowledged that he failed to disclose one of his three driver's license suspensions. While the appellant states that this failure to disclose was an oversight on his part and asserts that there was no intent to deceive, 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. *See In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003). Therefore, even if this was no intent to deceive, in light of the appellant's driving record and other negative interactions with law enforcement and the court system as described above, his failure to disclose this one driver's license suspension 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. Therefore, in reviewing the totality of Mr. Feliciano's background, it is appropriate to remove his name from the list based on the falsification of his application and an unsatisfactory background for the subject title.

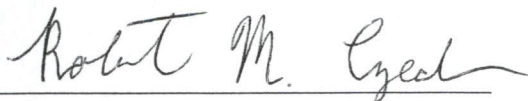
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Sheriff's Officer (S9999R) eligible list.

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 22nd DAY OF FEBRUARY, 2017



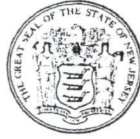
Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
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Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Dennis Feliciano, Jr.
Jeffrey J. Berezny, Esq.
Armando Fontoura, Sheriff
Evelyn Osorio
Kelly Glenn



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

June 7, 2016

Daniel J. Zirrith
241 Forsgate Dr.
Suite 109
Monroe Township NJ 08831

RE: Removal of Name from Eligible List – Dennis Feliciano, Jr.

Title: Sheriffs Officer
Jurisdiction: Essex County
Symbol: S9999R

Certification No: OL141183
Certification Date: 9/11/14

Dear Mr. Zirrith:

This is in response to your correspondence contesting the removal of your client's name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)6, which permits the removal of an eligible candidate's name from the eligible list if the eligible "Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process."

In support of its decision, the Appointing Authority provided copies of selected pages of your client's application to Essex County and other documents which indicate that your client was untruthful when he responded to several questions on the application. Question 30 of the application asks if the candidate has ever filed for bankruptcy, had a wage garnishment or judgment held against him or currently pending against him; your client responded, that he had filed for bankruptcy but failed to list five (5) records found in the Judgment/Lien section of his Lexis Nexis report. Question 34 asks if the candidate has ever been arrested for or charged as a juvenile in New Jersey or any other state; your client responded, "N/A." The Appointing Authority submitted documentation indicating that your client was arrested as a juvenile on May 1, 1995 for Aggravated Sexual Assault. Your client failed to list this charge.

In support of your client, in regards to Question 34, you state that your client had no knowledge of the juvenile charge, as he was eleven years old at the time the charges were brought. In regards to Question 30, you state that your client listed that he had defaulted on his credit cards in response to Question 31, and that there were only three, not five, judgments against him in his Lexis Nexis report. Nonetheless, you do not address why he failed to specifically mention those judgements in response to Question 34.

Your client was removed by the Appointing Authority because of falsification of the application; it has been held that a candidate's name may be removed from an eligible list based on falsification of the employment application when the withheld information is material to the position sought, not whether there was any intent to deceive on the part of the applicant.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your client's name to the eligible list. Therefore, the Appointing Authority's decision to remove your client's name has been sustained and the appeal is denied.

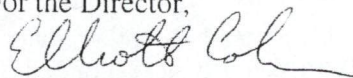
In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Elliott Cohen
Human Resource Consultant
Local Placement Services

Armando Fontoura, Sheriff
Sheriff's Office - 2nd Fl Room 204
50 Nelson Place
Newark NJ 07102