



STATE OF NEW JERSEY

In the Matter of Lionel Flores,
Police Officer (S9999U), South
Orange

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-1788

List Removal Appeal

ISSUED: MAY 4, 2018 (JET)

Lionel Flores appeals the removal of his name from the Police Officer (S9999U), South Orange, eligible list on the basis of falsification of the employment application and an unsatisfactory background report.

The appellant took the open competitive examination for Police Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on September 29, 2017. 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 his employment application and an unsatisfactory background report. Specifically, the appointing authority asserted that the appellant failed to list on the employment application that his driver's license was previously suspended for an unpaid parking ticket and that he received a moving violation on May 5, 2006 for Obstructing the Passage of Other Vehicles in violation of *N.J.S.A.* 39:4-67. Additionally, the appointing authority indicated that the appellant's driving abstract indicates that he was issued a moving violation on September 6, 2010 for Unsafe Operation of a Motor Vehicle; on June 22, 2013 for Unsafe Operation of a Motor Vehicle; and on November 27, 2014 for Speeding. The appointing authority also asserted that that in 2001 the appellant was arrested in Hoboken for Domestic Violence (Assault); was arrested in 2005 in Livingston for Theft; was arrested in 2010 in Kearny for (Assault); and was arrested in 2013 in Hoboken for Contempt of Court.¹

¹ The appointing authority did not provide any documentation pertaining to the arrests.

On appeal to the Civil Service Commission (Commission), the appellant asserts that, although he listed all of the driving infractions on the employment application that he could remember at the time he submitted the application, he did not remember a driving infraction that occurred 11 years ago. As such, he did not list such information in response to the questions on the employment application. Further, the appellant contends that he explained to the appointing authority that he was issued a summons while driving a company work vehicle and his company paid the fine. Moreover, the appellant asserts that he was not contacted by the South Orange Police Department at the time of the incident.

Despite being provided with the opportunity, the appointing authority did not provide a response.

It is noted that the appellant's driving record reflects that he was charged with Unsafe Operation of a Motor Vehicle on June 22, 2013; Involved in an Accident on January 10, 2012; Unsafe Operation of a Motor Vehicle on September 6, 2010; Obstructing Passage of Other Vehicle on May 5, 2006; Involved in an Accident on November 18, 2004; and two entries for Uninsured Motor Vehicle – license and registration cancellation on November 4, 2002 and October 4, 2002.

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 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); *In the Matter of Yolanda Colson, Correction Officer Recruit (S9999A), Department of Corrections*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003). *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 appointing authority states that the appellant did not list on the employment application that he was charged on May 5, 2006 with Obstructing the Passage of Other Vehicles in violation of *N.J.S.A. 39:4-67*. The appellant argues that he did not list such information as the incident happened over 11 years ago, that he was unaware that it occurred, and the incident occurred while he was driving a company vehicle. These contentions are unpersuasive. It is clear that the appellant did not properly complete the employment application. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Police Officer, to ensure that his employment application is a complete and accurate depiction of her 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 his name from the eligible list. It is clear that he failed to disclose information in her background in response to the questions in the employment application. In this regard, in response to question 53 on the employment application, "Have you ever received a traffic summons for a moving violation," the appellant admits in this matter that he did not list the May 5, 2006 incident. This type type of omission 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. The information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on her employment application. 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 Police Officer.

Additionally, the appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a law enforcement officer. However, the appellant's driving record indicates that his driver's license was suspended on two occasions. His driving record also indicates numerous violations of the motor vehicle laws of New Jersey. In that regard, his complete driving record is considered for this matter. The adverse information contained on the appellant's driver's abstract, including, among other things,

driver's license suspensions, involvement in various traffic accidents, and multiple listing of unsafe operation of a motor vehicle, cannot be ignored. Such information, especially when viewed in conjunction with the information he failed to disclose on his employment application, is sufficient to remove his name from the list.

It is recognized that 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 municipal Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, for the reasons set forth above, the appointing authority has presented sufficient cause to remove the appellant's name from the eligible list for Police Officer (S9999U).


Since the appellant's name has been removed on the basis of falsification of the employment application and unsatisfactory driving record, it is unnecessary to address the issue pertaining to his criminal record.

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 2nd DAY OF MAY, 2018



Deidre L. Webster Cobb
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