



STATE OF NEW JERSEY

In the Matter of Vernon Lincoln,
Correctional Police Officer (S9999U),
Department of Corrections

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

CSC Docket No. 2020-475

List Removal Appeal

ISSUED: NOVEMBER 21, 2019 (SLK)

Vernon Lincoln appeals his removal from the eligible list for Correctional Police Officer (S9999U), Department of Corrections, on the basis of an unsatisfactory background report and falsification of his employment application.

By way of background, on July 23, 2019, the Department of Corrections (Corrections) sent a notice to the appellant indicating this his name had been removed from the list for an unsatisfactory background report and falsification of his employment application. Specifically, it indicated that the appellant was charged with harassment and simple assault in 2008. The charges were disposed of through a juvenile referee. Additionally, the appointing authority presented that the appellant failed to disclose these charges.

On appeal, the appellant asserts that he did not intentionally withhold this information from his employment application. He explains that he was a juvenile at the time of the incident and had no record of these charges. The appellant indicates that he was 14 years old and in eighth grade at the time of the incident and he was never arrested or processed for these infractions. Further, all the charges were dismissed. Additionally, he states that incident was over 11 years ago and simply did not remember these infractions.

In response, the appointing authority presents that failure to disclose charges is one of its criteria for removal, even if the charges are dismissed.

CONCLUSION

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.

It is well established that the appointing authority may maintain records pertaining to juveniles, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision. Although it is clear that the appellant was never convicted of a crime, a juvenile record may warrant removal of an eligible's name where the juvenile record adversely relates to the employment sought. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

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 eligible's name from an employment 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.

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.

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 his 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.

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In the instant matter, the appointing authority had a valid reason to remove the appellant's name from the list. In this regard, while the incident in question, by itself, would not generally support his removal from the list, he failed to disclose the juvenile charges from the 2008 incident. The appellant explains that he had no record of the incident, the charges were dismissed, and he simply did not remember the incident. However, a review of question 46 on the employment application indicates that the appointing authority requested all charges, including juvenile charges. Further, the incident took place only eight years prior to the August 31, 2016 closing date, calling into question the appellant's contention that he did not remember it. Moreover, a review of the appellant's employment application indicates that he was charged with criminal mischief causing pecuniary loss, riot – commission of a crime, and disorderly conduct for a July 12, 2013 incident, which was approximately three years prior to the closing date. He was found not guilty of these charges. The fact that he listed these charges and not the prior charges, which occurred only five years before, also tends to belie his lack of recollection excuse. Regardless, the appellant is responsible for the accuracy of his application. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Consequently, the Commission's finds the appellant's argument unpersuasive. Therefore, even if the appellant had no intent to deceive, at minimum, the appointing authority needed this information to have a complete understanding of his negative interactions with the law in order to properly evaluate his candidacy. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officer, like 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 Correctional Police Officers to present a personal background that exhibits respect for the law and rules.

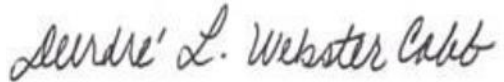
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Correctional Police Officer (S9999U), Department of Corrections eligible list.

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 19th DAY OF NOVEMBER, 2019



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