



STATE OF NEW JERSEY

In the Matter of Byron Robinson,
Motor Vehicle Operator 1 (S0574W),
New Lisbon Developmental Center

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

CSC Docket No. 2020-828

List Removal Appeal

ISSUED: DECEMBER 20, 2019 (SLK)

Byron Robinson appeals his removal from the eligible list for Motor Vehicle Operator 1 (S0574W), New Lisbon Developmental Center, on the basis of an unsatisfactory criminal background.¹

By way of background, the appointing authority removed the appellant’s name from the list for an unsatisfactory criminal background. Specifically, in February 1991, the appellant was found guilty of possession/consumption of alcoholic beverage under legal age and obstructing justice, which led to him being assessed \$305 in costs.

On appeal, the appellant states that he did not intentionally omit this charge from his employment application. He presents that he was 19 years old at the time of the incident and the judge explained that if he acted as an upstanding citizen for a full year following the incident, the incident would not be on his permanent record. The appellant indicates that he is now 49 years old and he has successfully undergone numerous background checks for a variety of employers and he never had any reason to think that this arrest was retained on his record. He also states that he has been a school bus driver for the last seven years. The appellant emphasizes that he did not think he had an arrest record based on the statements from the judge.

¹ While the appointing authority indicated its removal was predicated on the appellant’s criminal record, it appears that it actually removed the appellant’s name from the list based on falsification of his employment application.

In response, the appointing authority submits the employment application, where the appellant, in response to two separate questions, indicates that he was never convicted of a crime or other offense that has not been expunged by the Court. Therefore, it rescinded its conditional offer of employment and removed his name from the certification.

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.

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 (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)6, allows the 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:4-6.3(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 did not have a valid reason to remove the appellant's name from the list. 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. In this case, the appellant omitted information concerning an incident that

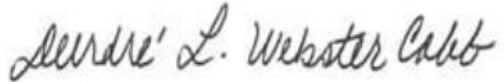
took place in February 1991, when he was 19 years old, that was over 27 years prior to the May 7, 2018 closing date. On appeal, the appellant adequately explained why he did not include this information. Additionally, the appointing authority has not presented any recent adverse behavior by the appellant. Therefore, the appellant's failure to disclose this information was immaterial as this incident does not indicate that the appellant currently has a background that is adverse to his being a Motor Vehicle Operator 1 and had no impact on the appointing authority's ability to investigate the appellant's background to evaluate his candidacy.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the Motor Vehicle Operator 1 (S0574W), New Lisbon Developmental Center eligible list, for prospective employment opportunities 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 18th DAY OF DECEMBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Byron Robinson
Steven Chestnut
Kelly Glenn