

Requirement on June 30, 2015. The Sheriff provided a copy of the appellant's certified driving abstract indicating that he was involved with several infractions, including Driving Wrong Way on a One Way Street on July 25, 2013; Involved in an Accident on September 29, 2013; Failure to Wear Seat Equipment on February 8, 2014; Improper Use of Multi Light Beams on October 16, 2014; Failure to Possess Driver's License on November 22, 2014, November 22, 2015, and August 22, 2016; Failure to Possess Driver's Insurance Card on December 23, 2014; Failure to Maintain Safety Glass Requirement on June 30, 2015; and Delaying Traffic on September 5, 2016. Additionally, South Orange indicated that the appellant failed to list on the employment application that he was subjected to disciplinary action while employed as a County Correction Officer in Essex County.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he properly indicated on the employment application that he was not subjected to disciplinary action by his current employer. In this regard, the appellant contends that the appointing authority only counseled him with respect to his leave time, which does not constitute disciplinary action. The appellant states that he attached a separate page to the employment application which indicated his motor vehicle infractions, and he does not understand why the appointing authority now claims it did not receive such information. Further, the appellant asserts that he does not have a criminal history as the 2011 juvenile matter was dismissed, and as such, he did not list such information on the employment application. Moreover, the appellant maintains that he properly completed the employment application and he did not attempt to deceive the appointing authorities.

In response, the appointing authorities provide information, including the appellant's driving abstract and the 2011 court matter. However, the appointing authorities do not provide any additional arguments or information in support of their claims.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)4, provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether the appellant's criminal history adversely relate to the position of Correction Officer Recruit. 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, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment 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, supra*.

It is well established that municipal police departments may maintain records pertaining to juvenile arrests, 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 arrest records were properly disclosed to the appointing authority, when requested for purposes of making a hiring decision. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest 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 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. Additionally, *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 an 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.

Initially, with respect to South Orange's argument that the appellant listed on the employment application that he was not disciplined by his employer, a review of the record confirms that the appellant's employer only subjected him to counseling, which the appointing authority does not dispute. Counseling does not constitute disciplinary action under Civil Service rules and law. As such, the appellant did not falsify South Orange's employment application on that basis as he provided the correct response. Other than the falsification issue pertaining to the counseling matter, South Orange does not refute the appellant's arguments that he was not disciplined by his employer, or provide any additional arguments or evidence in support of its claims.

With respect to the Essex County Sheriff's argument that the appellant falsified the employment application, in response to question 34 on the employment application, "Have you ever been arrested or charged as a juvenile in New Jersey or any other State," the appellant answered "Yes, April 7, 2011, age 17, Simple Assault and Disorderly Conduct, dismissed." The appellant clearly disclosed the 2011 juvenile arrest on the employment application, and as such, he did not falsify the employment application on that basis. With respect to Essex County's argument that the appellant failed to list his driving infractions on the employment application, although the appellant states on appeal that he provided a separate page with the employment application for the Sheriff's review, he does not provide any substantive evidence in support of that claim on appeal. In response to question 46 on the employment application, "Have you ever received a summons for any violation of the Motor Vehicle Laws in New Jersey or any other state," the appellant answered "Yes" and listed six summonses. However, the appellant failed to list three motor vehicle infractions including Driving Wrong Way on a One Way Street, Failure to Wear Seat Equipment, and Failure to Maintain Safety Glass Requirement.

It must be emphasized that it is incumbent upon an applicant, particularly an applicant for such sensitive positions as Police Officer and Sheriff's Officer, to ensure that the 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, although the appellant argues that he provided additional information pertaining to his driving record to Essex County, he has not provided any substantial evidence on appeal in support to show that he actually submitted such information to Essex County Sheriff. Such information is considered material and is crucial in an appointing authority's assessment of a candidate's suitability for the position.

More concerning is the appellant's driving history itself. In this regard, 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 for the subject positions. Such violations evidence a disregard for the motor vehicle laws and the exercise of poor judgment. The appellant has offered no substantive explanation for these numerous infractions. With respect to the appellant's driving record, his driving abstract reveals he was involved in an accident in 2013, and the most recent 2016 infraction of delaying traffic occurred less than two years prior to when he applied for the subject examination. The recency and involvement in such driving infractions reflects a disregard for the motor vehicle laws and rules, which is unacceptable for a candidate applying for a law enforcement position. It is recognized that Sheriff's Officers and 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 Sheriff's Officers and Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's recent driving infractions provide sufficient cause to remove his name from the eligible lists.

With respect to the appellant's criminal record, the 2011 juvenile arrest, while, pursuant to the above listed rules, could be considered at the time of the appointment process. However, since the appellant has been removed on the basis of falsification of the employment application and for an unsatisfactory driving record, it is unnecessary to address that issue.

Accordingly, for the reasons set forth above, the appointing authorities have presented sufficient cause to remove the appellant's name from the eligible lists for Sheriff's Officer (S9999U), Essex County and Police Officer (S9999U), South Orange. However, the removal in this matter does not prevent the appellant from

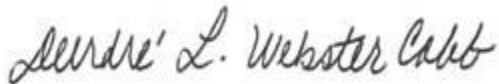
applying for any similar positions in the future, as the further passage of time without further infractions may be sufficient to show that he has been rehabilitated.

ORDER

Therefore, it is ordered that these appeals 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 20TH DAY OF MAY , 2020



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