

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of A.P., Correctional
Police Officer (S9988A), Department
of Corrections

List Removal Appeal

CSC Docket No. 2020-1882

ISSUED: JULY 2, 2020 (HS)

A.P. appeals the removal of his name from the eligible list for Correctional Police Officer¹ (S9988A), Department of Corrections on the bases of falsification of the preemployment application and a positive drug test.

The appellant, a non-veteran, took and passed the open competitive examination for Correctional Police Officer (S9988A), which had a closing date of January 31, 2019. The resulting eligible list promulgated on June 27, 2019 and expires on June 26, 2021. The appointing authority requested the removal of the appellant’s name due to falsification of his preemployment application and a positive drug test. Specifically, the appointing authority asserted that the appellant failed to disclose, among other things, the following:

- As a result of a February 15, 2008 incident in West New York, the appellant was charged as a juvenile with possession/consumption of alcohol under legal age, *N.J.S.A. 2C:33-15a*, and criminal mischief, *N.J.S.A. 2C:17-3b(2)*, which were dismissed.
- As a result of a March 28, 2008 incident in West New York, the appellant was adjudicated delinquent on a charge of possession/consumption of alcohol under legal age, *N.J.S.A. 2C:33-15a*, for which he received a deferred disposition.
- On March 6, 2014,² the appellant violated a Cliffside Park ordinance concerning the consumption of alcohol in a public place.

¹ Pursuant to *N.J.S.A. 11A:2-11.1*, effective May 1, 2018, the title of Correction Officer Recruit has been retitled to Correctional Police Officer.

² The appellant was an adult at the time.

The appointing authority also submitted a laboratory report stating that a sample of the appellant's urine taken on December 2, 2019 was initially screened using the immunoassay method for, among other things, barbiturates. The laboratory report further indicated that the sample was retested using the mass spectrometry method, which confirmed a positive test for butalbital, a controlled substance, and that butalbital was not listed on the appellant's medication sheet. The appellant was provided with an opportunity to verify that he had a prescription for butalbital. In response, the appellant explained that on November 28, 2019, he was spending Thanksgiving with his sister when he felt pain in his head, which caused a migraine. According to the appellant, he asked his sister for headache medication, and she informed him that she took prescription drugs for her migraines. The appellant's sister stated that the appellant could have two tablets. The appellant stated that those tablets are what came up in the laboratory report. As it deemed the appellant's explanation insufficient, the appointing authority also rejected the appellant for his positive drug test.

On appeal to the Civil Service Commission (Commission), the appellant states that upon learning of the removal of his name from the eligible list, he proceeded to the police departments in West New York and Cliffside Park and obtained disposition paperwork concerning his charges. The appellant offers an explanation for why he did not previously disclose this information. Specifically, three days before reporting for the initial phases of preemployment processing, he had called the police department in West New York, where he grew up. The appellant knew documents would be there. He asked a police officer about obtaining a copy of his criminal history. The officer directed the appellant to the record room, which informed him that it was not allowed to disclose or give him a solid copy or proof of his criminal background history. The record room also informed the appellant that the appointing authority would have to request a copy of the history. The appellant then sent the following e-mail to the appointing authority:

. . . I would like to inform the [appointing authority] that I contacted the police stations to get a transcript of my criminal history documents. They advi[sed] me that the [appointing authority] has to request a copy of the transcripts and that they cannot allow me to have a copy or have access to the paperwork.

In support, the appellant submits court disposition paperwork for his juvenile and ordinance charges.

In response, the appointing authority indicates that it stands with its original decision to remove the appellant's name from the eligible list. It maintains that the instructions in the preemployment application clearly required the appellant to disclose the above-described information but that he failed to do so. The appointing authority points out that the appellant acknowledges knowing that relevant

documents were located at the West New York Police Department. It is noted that the application stated that “it is mandatory that you disclose all charges” and “all juvenile matters” and that “everything must be disclosed on this application regardless of the outcome.” The application also asked if the candidate had “ever had any police contact, been taken into custody, or charged with juvenile delinquency” or “ever been ticketed, arrested or charged with a violation of a city or local ordinance of the Disorderly Persons Offense Act.” The appellant answered “No” or “N/A” to these and all other questions in the “Arrest History” section of the application. Additionally, the appointing authority maintained that the appellant’s name was also properly removed from the eligible list based on his positive drug test. In support, the appointing authority submits copies of the appellant’s preemployment application; documentation related to his positive drug test; and documentation from the Family Automated Case Tracking System and New Jersey Automated Complaint System, respectively.

In reply, the appellant maintains that he attempted to obtain the relevant information related to his charges. The appellant also provides photographs of the medication that had been prescribed to his sister, labeled “APAP/BUTALBITAL/CAFF.” He maintains that although the medication was not prescribed to him, it was prescribed. The appellant contends that he does not abuse drugs.

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 eligible’s name from an eligible list when he 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)3, states that an eligible who is physically unfit to effectively perform the duties of the position may be removed from the eligible list. *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.

Upon review of the record, it is clear that the appellant did not disclose his juvenile and ordinance charges on his preemployment application. The appellant claims that the West New York Police Department advised him, three days before he was to appear for the initial phases of preemployment processing, that it could not supply him with documentation. Even assuming that was true, it must be noted that the appellant acknowledges knowing beforehand that relevant documentation was located at the West New York Police Department, meaning that he was at least aware of prior interaction with that department. However, the appellant only sent the appointing authority a generally worded e-mail that referred to “the police stations” and, more importantly, answered “No” or “N/A” to every question in the “Arrest History” of the application instead of at least noting that he had prior interaction

with the West New York Police Department. Moreover, the appellant's account of his attempt to obtain information from the West New York Police Department does not explain why he could not disclose his ordinance charge, which occurred not in West New York but in Cliffside Park when the appellant was an adult. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correctional Police Officer, to ensure that his preemployment 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 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).

The appellant's omissions in this case are sufficient cause to remove his name from the eligible list. The instructions in the preemployment application clearly indicated that applicants were required to disclose all charges regardless of outcome, including those concerning local ordinances, all juvenile matters, and police contacts. The type of omission presented 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. Indeed, an appointing authority's assessment of a prospective employee could be influenced by such information, especially for a position in law enforcement. Therefore, the information discussed above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his application. The appellant's failure to disclose the information is indicative of questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correctional Police Officer.

The appointing authority has also demonstrated that the appellant had a positive drug screen and that such would prevent the appellant from effectively performing the duties at issue. In this regard, the appellant was unable to verify that *he* had been prescribed butalbital, and he has in fact admitted to using medication that was not prescribed to him. Such an action is indicative of questionable judgment, which is unacceptable for an individual seeking a position as a Correctional Police Officer. *See In the Matter of Serenity Davis, Correction Officer Recruit (S9988T), Department of Corrections* (CSC, decided February 8, 2017) (eligible who admitted using medication prescribed to her mother properly removed from list). The appellant, therefore, does not meet the required physical qualifications for the Correctional Police Officer title. Per the job specification, a Correctional Police Officer receives in-residence and on-the-job training including instructions for the

appropriate care and custody of a designated group of inmates and does work which will provide practical custody experience. Clearly, a positive drug screen presents an impediment to the appellant's ability to perform these security duties.

A Correctional Police Officer is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the 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 prison guards to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's falsification of his preemployment application and positive drug test provide sufficient, independent bases to remove his name from the subject 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 1ST DAY OF JULY, 2020

Deirdre' L. Webster Cobb

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