



STATE OF NEW JERSEY

In the Matter of Melissa Williams,
Police Aide (M0941U),
East Orange

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

CSC Docket No. 2021-929

List Removal Appeal

ISSUED: MARCH 26, 2021 (JET)

Melissa Williams appeals the removal of her name from the Police Aide (M0941U), East Orange eligible list on the basis of falsification of the employment application.

The appellant took the open competitive examination for Police Aide (M0941U), achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on July 29, 2020 (OL200633 certification). 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 the employment application. Specifically, the appointing authority asserted that the appellant failed to disclose on the employment application that she was arrested in 1991 and pled guilty to Theft By Deception – False Impression in violation of *N.J.S.A. 2C:20-4A*, and was fined \$50. The appointing authority also indicated that the appellant did not disclose on the employment application that in 2007 she was stopped by a Police Officer for loitering.

On appeal to the Civil Service Commission (Commission), the appellant maintains that she is still interested in an appointment to the subject position and requests that her name be restored to the list. She does not provide any further evidence or arguments in support of her appeal.

Despite being provided with the opportunity, the appointing authority did not provide any additional information or arguments in response to the appeal.

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 for the removal 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. *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.

A review of the appellant's employment application signed by the appellant in 2018, in response to question #3A on page 18, "As an adult or juvenile have you ever been interviewed or questioned by any law enforcement agency," the appellant marked "no." In response to question #s 3B and 3C, "Have you ever been placed under arrest for any reason" and "Have you ever been convicted of a crime," the appellant marked "no."

Initially, it must be emphasized that *N.J.S.A.* 11A:4-10 provides:

Eligibles may be questioned as to criminal convictions and pending criminal charges. Eligibles for *law enforcement, fire fighter or correction officer title* may also be questioned as to any arrest (emphasis added).

While the East Orange Police Department is a law enforcement agency, and employs individuals in law enforcement titles, such as Police Officer, at the time of her application, the appellant was not an applicant for such titles. In this regard, *N.J.A.C.* 4A:4-5.2(d) specifically provides that a law enforcement title is one that encompasses use of full police powers, but shall not include the local service competitive title of Police Assistant. For the purposes of this matter, such information is applicable to the Police Aide title. The job specification for Police Aide indicates that incumbents in that title perform routine, *non-law enforcement duties* in a law enforcement environment by assisting a Police Officer in performing clerical and routine field duties. As such, while incumbents in the Police Aide title shall be considered to be eligible to take a promotional examination for the title of Police Officer if they meet the requirements for that examination, the Police Aide title is clearly not a law enforcement title. While the appellant should not have been presented with questions pertaining to arrests on the employment application, if she affirmatively determined to answer the question, she was obligated to provide

accurate information. See *In the Matter of Carla Gardner* (MSB, decided November 17, 2004); *In the Matter of Gary Pinar* (MSB, decided March 26, 2003). In this case, the Commission notes that the appellant was arrested in 1991. Since the appointing authority should not have presented questions pertaining to the appellant's arrest, and given the amount of time that has elapsed since the 1991 arrest occurred, under these circumstances, the Commission finds that the appellant cannot be considered to have falsified her employment application.

Additionally, since *N.J.S.A.* 11A:4-10 only permits applicants for law enforcement titles to be questioned about arrests and the Police Aide title is not a law enforcement title, the Commission finds that the appellant's 1991 arrest is not a sufficient basis to remove her name from the eligible list. Moreover, there is no basis to remove the appellant's name from the list for other reasons. See *N.J.A.C.* 4A:4-6.1(a)9. The 1991 arrest and 2007 stop for loitering are remote in time and there is no evidence to show that she had any further contacts with law enforcement since 2007. As such, the appointing authority has failed to present a sufficient basis for removing the appellant's name from the subject list.

As to whether the appellant may be bypassed, it is clear that the appointing authority, in its discretion under the Rule of Three (*N.J.A.C.* 4A:4-4.8), could take into account the appellant's background to bypass her on the subject certification. On the certification, two higher ranked and one lower ranked candidate than the appellant was appointed. All of the other candidates were removed from the list or not reachable for appointment. Thus, her name could have been bypassed on the certification in accordance with the Rule of Three.¹

Finally, the Commission cautions the appointing authority that, in the future, it only asks permitted questions on its employment applications for non-law enforcement positions.

ORDER

Therefore, it is ordered that the appeal be granted. However, the appellant's name shall be recorded as bypassed for appointment on certification OL200633.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ The Commission also notes that the M0941U list expired on September 6, 2020, and the OL200633 certification was the final certification of that list. Accordingly, as the appellant could have been bypassed on the certification, no further remedy is warranted. However, as the appeal has been granted, there will be no record of the appellant's initial removal from the list.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF MARCH, 2021

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