



**STATE OF NEW JERSEY**

In the Matter of Jason Sutterlin, Parole Officer Recruit (S1000A), State Parole Board	:	<b>FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION</b>
	:	
	:	
CSC Docket No. 2021-1376	:	
	:	<b>List Removal Appeal</b>
	:	
	:	
	:	

**ISSUED: JULY 26, 2021 (SLK)**

Jason Sutterlin appeals the decision to remove his name from the Parole Officer Recruit (S1000A), State Parole Board eligible list on the basis of falsification.

The appellant took the open competitive examination for Parole Officer Recruit (S1000A), State Parole Board, which had an June 21, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified (OS200261) on September 24, 2020 as the 11<sup>th</sup> listed candidate. In seeking his removal, the appointing authority indicated that the appellant falsified his application.

On appeal, the appellant states that he provided all the required information without, to his knowledge, falsifying any documents. Therefore, he does not know what documents he allegedly falsified. The appellant indicates that the investigator told him that his application looked good. He presents that he was given a contingent offer of employment as long as he passed the medical and psychological evaluations as well as a drug test and interview panel. The appellant states that he completed these steps and was advised eight days prior to the academy start date that he was removed from the list without explanation. He also notes that he is a veteran.

In response, the appointing authority, represented by Tamara Rudow Steinberg, Esq., presents that appellant was asked to provide details regarding a 2005 Driving Under the Influence (DUI) arrest. He stated that he was initially an

occupant in a friend's vehicle, and after the friend reportedly crashed into a mailbox, the friend "ran off." The appellant reported that he made attempts to move the vehicle himself, and while doing so, the police arrived on the scene and he admitted to the officers that he was intoxicated. However, the police report indicated that a passerby initially observed the vehicle resting against the mailbox with the driver, who was the appellant, inside. The passerby contacted the police and made several attempts to "awaken the driver," but the efforts were unsuccessful. The responding police officer noted that the appellant was "passed out" and "slumped over the steering wheel" upon his arrival on the scene.

Additionally, the appellant was asked to provide details of his 2010 arrest for public drunkenness. He advised the investigator that, while out with a friend, he had started his vehicle via push-start ignition. After reportedly walking away from the vehicle, the appellant stated that an unknown individual drove away in his car. He reported that he pursued his stolen car on foot and was stopped by police and placed under arrest for public drunkenness. However, the investigator found that a review of the police report indicated that the police responded to a report of an unoccupied vehicle stuck on railroad tracks and reports of a white male "on the tracks." The vehicle was registered to the appellant. The officers attempted to make contact with the appellant in a parking lot, but he "jogged" across the street. Once officers made contact with him, he was suspected to be intoxicated and placed in custody. A test was administered with a blood alcohol reading of .14%. Further, when questioned about the location of the vehicle, the appellant stated that his vehicle was in another city. There was no indication in the report that he told the police that his vehicle had been stolen. Moreover, when the investigator questioned the appellant about the discrepancies, he reiterated his earlier reported events despite the discrepancies. The investigator contacted the reporting officer concerning this incident and the officer related his suspicions that the appellant left his stuck vehicle on the railroad tracks to avoid a DUI charge.

## 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 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.

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.

*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, it is noted that the appellant provides documentation that he received a conditional offer of employment subject to the medical and psychological examination. Further, he provides documentation that those examinations were scheduled, and he states that he went through the medical and psychological examinations, only to subsequently be informed that his name was removed from the list without explanation. Pursuant to the Americans with Disabilities Act (ADA), 42 *U.S.C.A.* sec. 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. *See also*, the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be "real," the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate's possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information. *See also N.J.A.C.* 4A:4-6.5(b) (An appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment). The Commission notes that the ADA's restrictions on psychological and medical examinations apply regardless of whether an individual has a disability. *See Roe v. Cheyenne Mountain Conference Resort*, 124 *F.2d* 1221, 1229 (10th Cir. 1997). Therefore, the appointing authority should not have conducted a medical or psychological examination of the appellant until after completing its background investigation and the Commission cautions the appointing authority that should it continue this practice, it could be subject to fines or other appropriate remedies. However, while the appointing authority should not have conducted the medical or psychological evaluation prior to completing its background check, a procedural violation is not grounds for reinstatement to the list when there are sufficient grounds for disqualification. Thus, while the appointing authority would be well served to revise its candidate evaluation procedures to avoid having this issue raised in future cases, based upon the totality of the circumstances presented in this matter, the appellant's remove from the eligible list is warranted. *See In the Matter of Scott Gordon* (MSB, decided December 18, 2002); *In the Matter of Curtis L. Dorch* (MSB, decided September 25, 2002).

Concerning *D'Alessio, supra*, the appellant could have been removed from the list for falsification even if he had no intent to deceive. However, the record in this case indicates that the appellant apparently did have an intent to deceive. Specifically, the record indicates that the appellant was arrested for DUI and had a second incident where he was arrested for public drunkenness where the reporting

officer suspected that the appellant was attempting to avoid a DUI arrest. Further, the record indicates that the appellant's versions of these events to the investigator contradicted the reporting officers' versions. Therefore, the record indicates that he lacks the integrity and honesty to be a Parole Officer Recruit. In this regard, it is recognized that a Parole Officer Recruit is a law enforcement employee who must promote adherence to the law. Parole Officer Recruits, like municipal 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 Parole Officer Recruits to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant was properly removed from the Parole Officer Recruit 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 21<sup>ST</sup> DAY OF JULY, 2021

*Deirdre' L. Webster Cobb*

---

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Jason Sutterlin  
Dana Ryba  
Tamara Rudow Steinberg, Esq.  
Division of Agency Services  
Records Center