



STATE OF NEW JERSEY

In the Matter of J. C, County	:	FINAL ADMINISTRATIVE ACTION
Correctional Police Officer (S9999A),	:	OF THE
Camden County	:	CIVIL SERVICE COMMISSION
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CSC Docket No. 2021-1939	:	
	:	
	:	List Removal Appeal
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ISSUED: SEPTEMBER 7, 2021 (SLK)

J. C. appeals the decision to remove his name from the County Correctional Police Officer (S9999A), Camden County eligible list on the basis of falsification of application.

The appellant took the open competitive examination for County Correctional Police Officer (S9999A), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant falsified his application.

On appeal, the appellant states that he does not know what he falsified and cannot respond further until he is provided more information.

In response, the appointing authority submits its background report. The background report indicates that the appellant presented on his application that in 2006, as a juvenile, he was found guilty of possession of a firearm for unlawful purposes and unlawful possession of weapons and sentenced to a one-year diversionary program. Additionally, he indicated that in 2009, he was found guilty of theft of property, theft by deception, credit card theft and fraudulent use and sentenced to an 18-month diversionary program. Further, the appellant stated that in 2013, he was found guilty of theft by unlawful taking, computer theft, forgery-

alter/change writing, forgery-uttering forged documents, credit card theft and fraudulent use and sentenced to two years non-custodial probation. Also, he presented that in 2014, he was found guilty of shoplifting and paid fines.

The appointing authority's background report also indicates that the appellant failed to disclose that in 2010, he was charged with resisting arrest/eluding-preventing officer from effecting arrest and obstructing the administration of law or government function, where the resisting arrest charge was dismissed, and he pled guilty to obstructing charge and ordered to pay fines. Also, he failed to disclose a 2016 harassment-communication in manner to cause alarm charge, which was dismissed, and a 2016 disorderly persons offense for refusing to submit to fingerprints referring to a previous harassment charge, which was downgraded to disturbing the peace, where the appellant pled guilty and paid fines.

The appointing authority's background report additionally indicates that the appellant had a poor and extensive driving history including numerous citations for uninsured motor-insurance cancelled, no license, registration or insurance identification in possession, failure to comply with court installment order, and failure to appear. The report also noted that the appellant currently has 18 points on his New Jersey Driver's License. Therefore, the appointing authority contends that the appellant's name should be removed from the subject list for an unsatisfactory criminal history, falsification of application, and an unsatisfactory driving record.

In response, the appellant states that there is an incorrect charge that is not related to him in the appointing authority's background report and he disclosed everything regarding his criminal history that he was asked to disclose. He asserts that he did not intentionally lie on his application and informed the appointing authority that he was going through the expungement process as he would like to be truthful and honest. The appellant attaches a copy of the expungement letter from his attorney, which indicated that his expungement was delayed due to the pandemic. He acknowledges that he had some troubling times in his past and could not remember every arrest. Therefore, on the advice of his attorney, he had his fingerprints checked with the State Police and FBI, which provided him a report of all his arrests, which he thought was accurate. The appellant presents that he listed all arrests that were on his criminal background report and he indicated that he was providing information to the best of his knowledge. Further, during orientation, he was advised that if an investigator needed any more information, the investigator would ask. The appellant reiterates that he had no intention of purposely lying on his application as he provided all information provided to him by the State Police. The appellant also states that during the pre-employment process, he emailed the department a change of address acknowledgment from the Motor Vehicle Commission as he bought a house in Linden. Therefore, he is not sure why his address said his P.O. Box as he changed his address on his driver's license. He further

presents that 95 percent of this issues in his background report are well over seven years old. The appellant states that his driving record is currently 100 percent better and the major infractions occurred five to 10 years ago.

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.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 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).

Further disorderly persons offenses, juvenile arrests, and offenses that result in the participation in a diversionary program, can still be considered adverse to the position sought. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002); *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3

(App. Div. October 9, 2003); and *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001).

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 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).

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 this matter, concerning the appellant's comments that he provided his background based on the report that he received after having his fingers prints checked, which was to the best of his knowledge, and he had no intention of lying, candidates are responsible for the accuracy of their application. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Therefore, even if there was no intent to deceive, in light of this above-noted extensive background, the appellant's failure to completely and accurately disclose his criminal history was material. At minimum, the appointing authority needed this information to have a complete understanding of his background in order to properly evaluate his candidacy. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017).

Regarding the appellant's expungement, the appellant provides an email to indicate that he informed the appointing authority that he was going through the expungement process during the pre-employment process phase and his expungement relief was delayed due to the Covid-19 pandemic.¹ Regardless, expungements do not automatically prohibit an appointing authority from rejecting an eligible for a law enforcement position. In this regard, the record indicates that he was charged with offenses in 2016,² which was approximately three years prior to the subject examination closing date. Therefore, in reviewing the totality of the

¹ The appellant's expungement was in March 2021, which was after the appointing authority made its decision to remove him from the subject list.

² The appellant indicates that there was an incorrect charge not related to him, but he has not identified which charge he is referencing or provided any evidence that there was an incorrect charge.

appellant's background, it was appropriate for the appointing authority to remove his name from the County Correctional Police Officer list based on falsification pursuant to *N.J.A.C. 4A:4-6.1(a)6*. It is also noted that based on this background, the appointing authority had ample cause to remove the appellant's name based on an unsatisfactory criminal history. Moreover, the appellant's extensive and unsatisfactory driving record provides further cause for his removal from the list.³ Accordingly, the appellant has not met his burden of proof, and the appointing authority has shown sufficient justification for removing 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 SEPTEMBER, 2021

Deirdre' L. Webster Cobb

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Chairperson
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c: J. C.
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³ The appellant claims that his driving record is 100 percent better, but the appointing's authority's background report indicates that at the time of its report, he had 18 points on his driver's license. The appellant has not denied this, nor has he provided any evidence that this is not the case.