



STATE OF NEW JERSEY

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

In the Matter of Jeffrey DeSimone,
Police Officer (S9999A), Lakewood
Township

CSC Docket No. 2021-1886

List Removal Appeal

ISSUED: JANUARY 21, 2022 (SLD)

Jeffrey DeSimone, represented by Catherine M. Elston, Esq., appeals his removal from the eligible list for Police Officer (S9999A), Lakewood Township on the basis of falsification.

By way of background, the appellant, a veteran, was certified on May 20, 2020 (OL200477) to the appointing authority as the second-listed eligible. In disposing of the certification, the appointing authority removed the appellant’s name from the subject eligible list on the basis that he falsified his preemployment application. In this regard, the appointing authority asserted that in response to the question: “have you ever received a summons or violation of the Motor Vehicle Laws in this state [sic] or any other,” the appellant failed to include a ticket. Specifically, it noted that the appellant only listed receiving a summons for “obstruction” on November 5, 2011. However, the New Jersey Automated Traffic System (ATS) also listed that he had received a ticket for “improper display/unclear plates” on that date which was dismissed. On appeal to the Civil Service Commission (Commission), the appellant alleged that he did not intentionally falsify his application as he had relied on his Driver’s Abstract, which only listed the obstructing the passage of another vehicle summons for the date of November 5, 2011. In, *In the Matter of Jeffrey DeSimone, Police Officer (S9999A), Lakewood Township* (CSC, decided February 3, 2021), the Commission found that the record did not reveal that the appellant made any attempt to intentionally omit or conceal the information as he provided the information that was readily available to him on the summons he received on November 5, 2011. Moreover, the record revealed that the incident occurred nearly 10 years earlier, making it reasonable for the appellant to rely on the information contained on his Driver’s Abstract. Therefore, the Commission found that the summons omitted from

the application, in and of itself, would not constitute sufficient cause to remove his name from the subject eligible list. The Commission further found that as the appellant was a veteran, he could not be bypassed for appointment from the subject certification and ordered that certification OL200477 be reissued and the appointing authority redispense of the certification.¹

Thereafter, the certification was returned to the appointing authority, and it continued the preemployment process. In redispensing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory background report and falsification of his application. The appointing authority indicated that the appellant had falsified his application as he failed to disclose that in 2015, when he was 25 years old, he was asked to resign as a Special Class II Police Officer with the Bay Head Police Department, after he had a verbal confrontation, while in uniform, with R.S., the appellant's pregnant 17-year-old girlfriend's neighbor. Specifically, it noted that the appellant had indicated on his application that his employment with the Bay Head Police Department had been terminated because of "Layoffs/Cutback/No Hours" in July 2015. However, the Bay Head Police Department had provided it with a June 29, 2015 letter of resignation from the appellant that indicated he was leaving "due to personal reasons" and that his last day of work would be July 5, 2015. The appointing authority noted that July 5, 2015 was the date of the altercation the appellant had with R.S., his girlfriend's neighbor. The appointing authority stated that during an April 8, 2021 interview, the appellant was questioned about the July 2015 incident, and confirmed that the incident happened while he was in uniform, and he noted that he had not reported the incident to Bay Head. However, he maintained that several days after the incident, the now retired Police Chief, told him that they needed him to resign due to budgetary cutbacks. The appellant then was questioned about the letter of resignation, which he confirmed that he backdated and that he had done so to "protect" himself from the July 2015 incident, as he did not want to be prevented from "getting picked up" by another police department.

The appointing authority also alleged the appellant falsified his application when he indicated that his separation from employment with Sealed Unit Parts Company (SUPC) in June 2019 was due to a "Layoff." In this regard, the appointing authority maintained that it had spoken with T.M., a manager at SUPC, who after reviewing the appellant's employment file, indicated that he was described as having conflicts with other employees, and was suspected of causing damage to computer equipment and authoring a note that referenced killing people. T.M. further noted

¹ The Commission noted that absent any other disqualifying factors presented by the appointing authority upon its background check, the appellant's appointment was mandated. If appointed, upon the successful completion of his working test period, the Commission ordered that the appellant be granted a retroactive date of appointment to the date he would have been appointed if his name had not been removed from the subject eligible list, for salary step placement and seniority-based purposes only. The Commission also specified that no other relief, such as back pay, was ordered.

that SUPC did not require employees to sign termination reports, but the appellant was aware of the termination. The appointing authority noted that when questioned about this employment, the appellant claimed that his former supervisor, who was his father's neighbor, maintained that he was subject to a layoff.

Additionally, the appointing authority noted an incident during the appellant's tenure in the police academy from December 2014 through May 2015, in which the appellant threatened another recruit. The appointing authority indicated that although the Recruit Training Coordinator at the academy was aware of the incident, and the appellant confirmed the incident occurred, there was no other documentation. The appointing authority also stated that on July 26, 2015, the appellant's then 17-year-old girlfriend filed a Temporary Restraining Order (TRO) against him. It noted that no charges were filed, and the TRO was vacated as the girlfriend failed to appear in court. In support, the appointing authority submitted relevant portions of the appellant's application; the June 29, 2015 resignation letter from Bay Head; the 2015 TRO and the Order of Dismissal; and a copy of the video recording of the appellant's April 8, 2021 interview, with relevant timestamps noted.

On appeal, the appellant argues that there was "improper collusion between" this agency's employees and the appointing authority, to "fabricate reasons" to justify a second removal of his name from the subject eligible list. In particular, he points to several emails between this agency and the appointing authority in which staff indicates what is and is not acceptable/sufficient documentation, and providing the appointing authority with opportunities to submit the information. For example, the appellant notes that in an April 28, 2021 email, staff did not direct that the appellant's appointment was mandated, and instead "educated and advised" the appointing authority as to what it needed to obtain to remove the appellant for "falsification." The email indicated that the appointing authority would need to submit "proof of all of the claims made in the updated background report." It further indicated that "for example" for certain allegations, a "signed affidavit" from the relevant parties could be provided. The appellant also noted that in an April 29, 2021 email, staff indicated that if no further information could be provided, then the matter would be "forwarded to the Division of Appeals and Regulatory Affairs (DARA) for enforcement." The appellant argues that instead of providing the requested affidavits, the appointing authority merely provided a statement regarding what the appointing authority claimed was said in the interview, and a video of the interview. In this regard, the appellant asserts that all of the statements made by the appointing authority regarding the interview are false, as he did not make any false statements. The appellant also maintains that this agency continually worked with the appointing authority *ex parte*, despite repeatedly stating the matter would be referred for enforcement if sufficient information was not submitted. Further, the appellant argues that in the emails, the appointing authority repeatedly indicated it was disregarding the Commission's prior order to appoint him, and instead claimed it had not completed the background investigation. The appellant maintains that doing so

gave the appointing authority “multiple bites of the appellant to remove” him from the subject eligible list.

Additionally, the appellant argues that these *ex parte* communications were unlawful. In this regard, he argues that Title 11A was implemented to protect public employees from arbitrary and frivolous personnel actions. Moreover, he notes that *N.J.S.A.* 11A:5-6 provides absolute veteran preference in employment, and as his name appeared on the subject eligible list, his appointment was mandated. Therefore, by providing the appointing authority with additional opportunities to submit information, and requesting additional information, this agency clearly “colluded” with the appointing authority to remove him from the subject eligible list. The appellant argues that by helping the appointing authority, this agency denied him his right to fundamental fairness and engaged in bad faith.

The appellant additionally contends that the appointing authority’s bias against him is evident from a February 5, 2021 internal email in response to receiving the prior Commission’s decision, in which a Lakewood official states to a Lakewood Police Captain “FYI what would Civil Service do when this guy beats on some prisoner.” The appellant maintains that as he had only originally been removed for failing to list a single ticket, this statement, and the appointing authority’s determination to remove him, despite his qualifications, is clear evidence of the appointing authority’s bias. The appellant notes in March 2021 he provided the appointing authority with the requested updated application and it was requested that he appear for an interview where the appointing authority attempted to “obtain admissions of falsification by coercing and intimidating” him. In this regard, the appellant argues that the interview was clearly not for purposes for obtaining additional information or clarification as it was more akin to an interrogation as two officers interviewed him for approximately 45 minutes. The appellant argues that the interview focused on his separation from employment from Bay Head and SUPC. The appellant asserts that the officers misrepresented and insinuated “facts they knew to be false, and/or . . . inaccurate” in order to get him to change the answers he provided on his application.

The appellant asserts that it was the appointing authority that made false statements of fact, and not him. In this regard, the appellant reiterates that during his interview, the officer lied when he stated that it had evidence that he had falsified his application by indicating that he had been laid off from Bay Head. In support, he submits a letter from the current Police Chief, who indicates that when the appellant was hired in 2014 he was:

. . . advised that Bay Head would put him thru [sic] the Academy and his position would depend on budget restriction and the number of SLEO II Officers. Mr. DeSimone completed the Police Academy and began employment with Bay Head. In June of 2015, after the Budget was

revisited, and the number of SLEO II's in the department did not change, Mr. DeSimone was advised that Bay Head could not keep him on any longer. Mr. DeSimone put in a letter of resignation after the fact, so if he was to seek any further employment it was on file that he left in good standing.

The current Police Chief further indicated that neither he nor anyone else in the Bay Head Police Department were aware of the July 6, 2015 incident, that the incident happened after the appellant's "release" and "had no bearing as to why he was laid off." Finally, the Police Chief indicated that he had told the appointing authority the same. Therefore, the appellant asserts that since the appointing authority's background investigation omits this information, it is clear that the appointing authority submitted false information. The appellant also asserts that the appointing authority lied about SUPC, as it failed to speak to the individual who was the appellant's direct supervisor. In this regard, the appellant asserts that his direct supervisor laid him off due to a lack of work. In support, the appellant submits a letter from his direct supervisor which states that the appellant was one of the "few laid off" and that he had "been a good, dependable and hard worker thus leaving the company in good standing." The appellant argues that since the appointing authority has falsified its background report, by omitting relevant facts, he is therefore qualified for the position. Moreover, the appellant asserts that as a veteran, who has received "medals and citations," and multiple references, he is entitled to the position.

In response, the appointing authority, represented by Steven Secare, Esq., reiterates its arguments and submits, in part, certifications of the Police Captain and Police Lieutenant who performed the background investigation. In particular, the Police Captain notes that due to the timing of the altercation with the appellant's girlfriend's neighbor, and his separation from Bay Head Police Department, the appellant was questioned about why he left Bay Head. However, when questioned, the appellant "would not confirm about the rationale behind his separation from Bay Head." The Police Captain also maintains that the appellant could not explain why he was still working after July 5, 2015, despite the resignation letter that, he supposedly wrote on June 29, 2015, indicated his last day of employment was July 5, 2015. The Police Captain additionally contends that the appellant could also not explain the inconsistency of having written a resignation letter when he claimed he was laid off for budgetary reasons. In this regard, the appellant claimed the resignation letter "was to protect himself so he could seek future employment with other law enforcement agencies." Additionally, the Police Captain notes that he spoke to T.M., the manager of SUPC, which the appellant claimed on his application had laid him off, who indicated that he would check the appellant's file and call him back. Thereafter, the manager called and told the Police Captain that the appellant was fired, as he was believed to have been involved in an incident at work. The Police Captain notes that upon questioning, the appellant denied having been fired. In his certification, the Police Lieutenant indicates that he spoke with the Police Training

Coordinator at the Ocean County Police Academy who indicated that the appellant had threatened to kill another recruit after the recruit had left an eaten piece of fruit in the appellant's car. The Police Training Coordinator indicates that he spoke with them both and no further action was taken.

CONCLUSION

Initially, the appellant claims that there was "improper collusion between" this agency's employees and the appointing authority, to "fabricate reasons" to justify a second removal of his name from the subject eligible list. In particular, he points to several emails between this agency and the appointing authority in which staff indicated what is and is not acceptable/sufficient documentation and provided the appointing authority with opportunities to submit the information. Moreover, he claims that this agency engaged in multiple *ex parte* communications with the appointing authority and "helped" the appointing authority improperly remove his name from the subject eligible list. However, the appellant misconstrues the role of this agency in the certification disposition process. In this regard, the certification disposition process is *not* the appeal process for eligibles on the list. Rather, the certification disposition review process requires this agency to ensure that sufficient information is provided to support an appointing authority's request to remove an eligible's name from a certification. Part of that process necessitates communication from this agency which can and does include requests for specific information, examples of acceptable information, and noting any deficiencies in the provided information and what additional information may be submitted to cure those deficiencies. *See, e.g., N.J.A.C. 4A:1-2.1 and N.J.A.C. 4A:4-4.8(b)6.* Significantly, the appropriate representative of this agency must then determine if there are sufficient grounds for the removal. If, after notification of any deficiencies and providing the opportunity to cure them, the appointing authority fails to provide sufficient information to support its request to remove an eligibles name from the eligible list, this agency will not remove the individual's name from the list. This may result in this agency referring the matter of an outstanding disposition to the Civil Service Commission to order that it be properly disposed. However, if the appropriate representative determines that there are sufficient grounds for removal, the agency is required to notify both the appointing authority and the eligible of its decision and to advise the eligible of his or her appeal rights. *See N.J.A.C. 4A:4-4.7(c).* In other words, the certification disposition process only involves this agency and the appointing authority.

In this matter, the appellant complains that this agency told the appointing authority what information would and would not be acceptable, instead of immediately telling the appointing authority that it was required to appoint him. A review of the emails in this matter between this agency and the appointing authority does not indicate that this agency's actions were outside of the norm or inappropriate. Rather, the appointing authority was notified of certain deficiencies and provided

information as to what additional documentation could or would be acceptable, and it was provided an opportunity to submit any additional information. Therefore, the Commission finds that there was no collusion nor bias by this agency in the disposition of the updated certification.

With regard to the appellant's removal, *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. Additionally, *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 who has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. Moreover, *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.

In the instant matter, the appointing authority requested the removal of the appellant's name on the basis that he falsified his application by indicating he was laid off from the Bay Head Police Department as a Special Class II Officer and from SUPC. It maintained that with regard to Bay Head, the appellant was questioned as to why he would submit a backdated letter of resignation indicating he was resigning for "personnel reasons" if he had been laid off. The appointing authority claimed that based on the altercation the appellant had with his girlfriend's neighbor, while off-duty but in uniform, the appellant was attempting to shield himself from any resulting consequences, by his admittedly backdating of the resignation letter. The appellant explains on appeal that he was laid off by Bay Head, but claims he wrote the resignation letter to establish that he left in good standing. In support, he submits a letter from the current Bay Head Police Chief. However, the Commission notes that being laid off from employment is not a negative consequence, as it is not a dismissal for cause, but rather, based on economic factors. Thus, being laid off for economy and efficiency and a resignation for personal reasons are significantly different reasons for ending an employment relationship. Regardless of the facts surrounding the appellant's termination of his employment with Bay Head Police Department, he did not provide a complete and clear reason for leaving that position. The appellant clearly indicated on the application he provided to the appointing authority that he had been laid off. However, when presented with the letter of resignation obtained by the appointing authority during its background investigation, he admits that he did write a resignation letter indicating that he was leaving due to personal reasons. These are clearly two different reasons as to why he left the employ of the Bay Head Police Department. Moreover, the Commission is puzzled as to why he would indicate that he was laid off on his application when, according to the current Bay Head Police Chief's submission explaining the situation,

the appellant submitted the “letter of resignation after the fact, so if he was to seek any further employment it was on file that he left in good standing”.

Moreover, with regard to the appellant’s employment with SUPC, the appellant and his former supervisor claim that the appellant was laid off. However, the manager from SUPC indicated that upon reviewing the appellant’s employee file, he was fired. Additionally, the appellant’s background presents several other areas of concern, namely, the incident while he was in the Police Academy and the incident with his then girlfriend’s neighbor on July 5, 2015. All of these incidents, along with the appellant’s failure to provide complete information on his application with regard to his employment with Bay Head, gives the Commission serious pause as to his suitability to be a Police Officer and provides a sufficient basis to remove him from the subject eligible list. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560, 566 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567 (1990). The appellant’s background exhibits conduct that does not meet this standard. Furthermore, and contrary to the appellant’s beliefs, his status as a veteran affords him no entitlement to employment, **unless** there are found to be no reasons for the removal of his name from the list pursuant to *N.J.A.C.* 4A:4-4.7 and *N.J.A.C.* 4A:4-6.1. For the reasons set forth above, such is not the case in this matter.

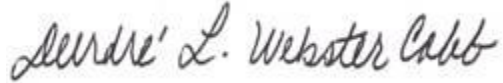
Finally, the appellant claims that the appointing authority had “multiple bites at the same apple,” and therefore, he is entitled to receive an appointment. However, the Commission notes that although the appointing authority should have completed its background investigation prior to its first request to remove the appellant, its failure to do so, in and of itself, does not warrant his appointment. Especially, where as in this matter, there are multiple areas of concern as noted above. However, the appointing authority is cautioned that in the future, its failure to complete the background investigation prior to removing an eligible, may result in fines or other penalties. *See N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-2.1(a)2.

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 19TH DAY OF JANUARY, 2022



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