



STATE OF NEW JERSEY

In the Matter of Ishmael Gomez,
Police Officer (S9999A), North
Bergen

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

CSC Docket No. 2021-1123

List Removal Appeal

ISSUED: APRIL 11, 2022

Ishmael Gomez, represented by Corey M. Sargeant, Esq., appeals the decision to remove his name from the Police Officer (S9999A), North Bergen eligible list on the basis of an unsatisfactory driving record and falsification of the employment application.

The appellant took the open competitive examination for Police Officer (S9999A), North Bergen, which had an August 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified (OL200436) and he was ranked as the 2339th candidate. In seeking his removal, the appointing authority indicated that the appellant falsified his application. Specifically, the appointing authority's background report indicated that he had an active Failure to Appear warrant for an improper Use of Permit summons that was issued in February 2020 and a March 2015 summons for a park curfew violation that he failed to disclose. Moreover, it indicated that the appellant had 25 motor vehicle summonses and he did not disclose most of them. Also, he failed to bring in all the necessary documentation needed before the deadline date during the interview process.

On appeal, the appellant states that he was initially advised that his name was removed from the list because there were two unpaid parking tickets under his name. He asserts that he had no knowledge of these outstanding tickets when he was completing his application. The appellant presents that he had two vehicles

under his name, but that one was his brother's personal vehicle. He explains that his brother's vehicle was registered to him because his brother had financial issues and the insurance was too much for him to pay. The appellant indicates that the two tickets in question were not from his personal vehicle. He states that he did not receive mail with information regarding these two tickets because the court was closed due to the Covid-19 pandemic. The appellant states that he became aware of these tickets during the interview process, was advised to pay them, and he immediately did. He emphasizes there was no reason to hide these tickets.¹

In response, the appointing authority, represented by Drew D. Krause, Esq., presents that the appellant had an active Failure to Appear warrant for an improper Use of Permit summons issued in February 2020, a March 2015 summons for a park curfew violation, and 25 motor vehicle summonses between 2015 and 2020, including some that we near or after the August 31, 2019 closing date. Further, the appellant only disclosed six motor vehicle summonses on his application and did not disclose all non-parking ticket motor vehicle summonses on his application. Additionally, it presents that the appellant failed to provide his selective service registration card, credit report and W-2s for the past five years as required. Therefore, the appointing authority contends that the appellant had an unsatisfactory driving record and he falsified his application by failing to disclose all information. Moreover, it argues that the appellant's appeal demonstrates a lack of candor as he claims that he was truthful and disclosed all information. Therefore, the appointing authority argues that the appellant's unwillingness to accept responsibility for his application is contrary to the qualities that a Police Officer should have. Additionally, the appointing authority asserts that the appellant's appeal indicates that he and his brother were attempting to mislead their insurance company.

In reply, the appellant presents that he was called for an interview, background check, and psychological review² by the appointing authority. He asserts that he provided all documents and information requested by the appointing authority. He contends that he did not withhold any material information and the

¹ The appellant's initial response was filed *pro se*.

² The record is unclear if the appellant had a psychological evaluation. However, if he did, it would appear that the appointing authority did not strictly conform with the precise requirements of the ADA. If it chose to conduct the appellant's background check while simultaneously scheduling and completing the appellant's psychological examination, the appointing authority did not have the opportunity to fully review the appellant's background before conducting the psychological examination. Consequently, if this happened, the appointing authority did not comply with the technical requirement of rendering a conditional offer of employment, based upon a complete review of the candidate's background, prior to administering the psychological examination. If this happened, 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 falsification and unsatisfactory driving record are sufficient cause to remove his name from the eligible list. See *In the Matter of Scott Gordon* (MSB, decided December 18, 2002); *In the Matter of Curtis L. Dorch* (MSB, decided September 25, 2002). See also *In the Matter of Jemar Bennett* (CSC, decided June 30, 2021).

Civil Service Commission (Commission) has held that a misstatement in the understanding of a term does not amount to material withholding and deception. The appellant reiterates that when he was requested to pay the unpaid parking tickets, he did so immediately. Further, he emphasizes that he was unaware of the Failure to Appear warrant and the March 2015 park curfew violation and he rectified those matters as soon as he became aware of them. Concerning the vehicle used by his brother, he states that the vehicle is legally registered and insured under his name and he allows his brother to borrow the car when necessary and there was no attempt to mislead the insurance carrier. He presents that the appointing authority requested that he provide five years of motor vehicle driving records and he provided the requested driving abstract. Therefore, the appellant argues that it is arbitrary and capricious for the appointing authority to now change its standard asking for summonses which he was not able to obtain, and the Motor Vehicle Commission did not provide. The appellant presents that the abstract contained six tickets from 2016 to 2017, one for maintenance of lamps, two for unsafe operations of a motor vehicle, one for careless driving, one for failure to wear a seatbelt and one for speeding. He indicates that he now has two years of safe driving without receiving a ticket and his driving history as whole is satisfactory. He states that his selective service registration card, credit report, and W-2s for the past five years were inaccessible at the time of his application and he submitted these documents to the appointing authority as soon as they became available. The appellant contends that the appointing authority accepted these documents without objection, waiving its right to object or challenge the documents as late. He argues that it would be unfair for the appointing authority to accept the late submissions and then later raise an objection to the timeliness of the documents.

In further reply, the appointing authority asserts that it is troubling that the appellant admits that there were legal violations and warrants against him that were “unbeknownst” to him, which it believes demonstrates that he is unfit to be a Police Officer. It contends that the appellant made a false statement in his initial appeal when he claimed that he disclosed all motor vehicle violations when he had 25 summonses between 2015 and 2020. Further, the fact that he has two recent years without receiving a ticket pales in comparison to his complete driving history, which is unsatisfactory and grounds for removal. Additionally, it presents that contrary to the appellant’s position that he submitted all requested information regarding his driving record because he was only asked to provide a five-year driver’s abstract, a review of the application indicates that he was asked multiple questions that stated, “Have you ever...?” which indicates that there was no limit to the summonses that he was required to disclose. Concerning the late submitted documents, the appointing authority asserts that the appellant has not submitted any legal authority that its acceptance of these documents late was a “waiver,” because likely there is no such authority in a Civil Service context.

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 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.

Further, 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:4-4.7(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, the record indicates that the appellant has 25 motor vehicle related summonses between 2015 and 2020, which includes summonses near or after the August 31, 2019 closing date. However, on the appellant's application, he only disclosed six between 2016 and 2017. The appellant explains that he only disclosed six because the appointing authority asked him for his five-year driver's abstract and he disclosed the six that were on the abstract. He also argues that the appointing authority is now arbitrarily and capriciously changing its standard by now requiring him to disclose all motor vehicle summonses. However, a review of question 93 on the application indicates that the appointing authority asked, "Have you ever received a summons for a violation of the motor vehicle law in this or any other State, excluding parking violation? If YES, provide details below:" Therefore, the record indicates that the appointing authority was not limiting summonses to be disclosed

to only those indicated on the five-year driver's abstract and candidates are held accountable for the accuracy of the information submitted and any failure to include information was at his peril. See *In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Moreover, common sense dictates that, at minimum, the appointing authority required the appellant to disclose motor vehicle summonses that were more recent than the ones he disclosed. Further, while the record is unclear if the appellant and his brother were attempting to mislead the insurance carrier, at minimum, the appellant is responsible for being aware of violations concerning a vehicle that was registered and insured in his name as well as other legal matters against him. Therefore, even if there was no intent to deceive, in light of the appellant's numerous motor vehicle summonses, including some near or after the August 31, 2019 closing date, the appellant's failure to fully disclose all these items was material. At minimum, the appointing authority needed this information to have a complete understanding of her background to properly evaluate her candidacy. *In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). Additionally, the record indicates that the appellant failed to submit all requested documents in a timely fashion. The appellant argues that he submitted these documents as soon as they were available and claims that since the appointing authority accepted them when he submitted them, the appointing authority waived its right to claim that they were untimely. However, the appellant has submitted no legal authority for such a claim. Mere acceptance of these documents is not any indication that the appointing authority was waiving its rights. At minimum, if the appellant was unable to submit the required documents at the time his application was due because the documents were unavailable, the appellant should have submitted an explanation with his application explaining why he was not providing the documents as required, what he was doing to obtain these documents, and when he could expect to provide them.

The record also indicates that the appellant had an unsatisfactory driving record as he had 25 motor vehicle summonses between 2015 and 2020. The fact that the appellant has not had any summonses in the last two years is insufficient to demonstrate that his driving record was rehabilitated as he had summonses near or after the August 31, 2019 closing date. It is also noted that even if the Commission was limiting its review to summonses on the appellant's driving abstract, which it is not, it still would find the appellant's driving record unsatisfactory as the abstract indicates that the appellant had six motor vehicle summonses in 2016 and 2017, with the last one in May 2017, which is less than three years prior to the August 31, 2019 closing date and insufficient time to demonstrate that his driving history was rehabilitated. The appellant's driving record indicates a disregard for the law which is incompatible with the duties of a law enforcement officer. In this regard, 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 Office is a special kind of

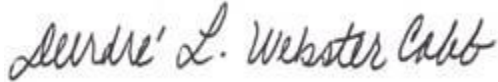
employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal 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 public expects Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the Commission finds that the appellant's removal from the list was proper for all the reasons set forth above, and the appellant failed to meet his burden of proof.

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 6TH DAY OF APRIL 2022



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Ishmael Gomez
Corey M. Sargeant, Esq.
Allen Pascual
Drew D. Krause, Esq.
Division of Agency Services
Records Center