



STATE OF NEW JERSEY

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| In the Matters of Frank Capoano, | : | |
| Correctional Police Officer (S9999U) | : | FINAL ADMINISTRATIVE ACTION |
| and (S9999A) Department of | : | OF THE |
| Corrections, and Correctional Police | : | CIVIL SERVICE COMMISSION |
| Officer; Juvenile Justice Commission | : | |
| (S9999U), Juvenile Justice | : | |
| Commission | : | List Removal Appeals |
| | : | |
| | : | |
| CSC Docket Nos. 2020-226, <i>et. al.</i> | : | |

ISSUED: November 23, 2022 (JET)

Frank Capoano appeals the removal of his name from the Correctional Police Officer (S9999U) and (S9999A), Department of Corrections (DOC), and Correctional Police Officer, Juvenile Justice Commission (S9999U), Juvenile Justice Commission (JJC), eligible lists, on the basis of an unsatisfactory background report and for falsification of the employment record. Since these matters involve similar issues, they have been consolidated herein.

The appellant took the applicable open competitive examinations, achieved passing scores, and was ranked on the subsequent eligible lists. The appellant’s name was certified to the DOC from the (S9999U) eligible list on September 14, 2018, and certified from the (S9999A) eligible list on June 2, 2021. In disposing of the September 14, 2018 certification, the DOC removed the appellant on the basis of falsification of the employment application. Specifically, the DOC alleged that the appellant did not disclose on the application that he was charged in 2003 with Simple Assault in violation of *N.J.S.A. 2C:12-1A(3)* (dismissed), and in 2014 with Theft of Services in violation of *N.J.S.A. 2C:20-8A*, which was downgraded to a violation of a local ordinance. In disposing of the June 2, 2021 certification, the DOC removed the appellant’s name on the basis of an unsatisfactory background report and on the basis of falsification of the employment application. Specifically, the DOC alleged that on September 17, 2003, the appellant was charged with Simple Assault in violation of *N.J.S.A. 2C:12-1A(3)*; on July 24, 2008, charged with Having an Illegal Apartment in

violation of a municipal ordinance; on February 13, 2009, charged with Bad Checks, Money Orders, Electronic Funds Transfers in violation of *N.J.S.A. 2C:21-5B*; in 2011, charged with two violations of Failure to Remove Snow in violation of a municipal ordinance; on December 18, 2013, charged with Operating a Motor Vehicle in a Park; in 2014, charged with two violations of Failure to Remove Snow in violation of a municipal ordinance; on May 16, 2014, charged with Theft of Services in violation of *N.J.S.A. 2C:20-8A* (dismissed), which was downgraded to a violation of a local ordinance; and in 2015, charged with Failure to Remove Snow in violation of a municipal ordinance. Additionally, the DOC alleged that the appellant failed to disclose on the employment application that in 2019, a summons was issued to him for Littering in violation of a municipal ordinance; that in 2003 he was charged with Simple Assault; that in 2014 he was charged for Theft of Service; and that in 2015 he was charged with Failure to Remove Snow.

The appellant's name was also certified on August 2, 2018 (OS180465) from the Correctional Police Officer, JJC (S9999U) eligible list. In disposing of the certification, the JJC removed the appellant on the basis of an unsatisfactory criminal record. Specifically, the JJC alleged that the appellant failed to disclose on the employment application that he was charged with Simple Assault in 2003, and he was charged with Theft of Services in 2014.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he did not intentionally falsify the employment applications, and he does not understand why he was removed from the lists as he was never arrested. The appellant states, among other things, that the 2003 Simple Assault charge was a false claim and the charge was dismissed, and he was unaware of that charge until he was notified of it in this matter, as it was filed months after a car accident occurred. The appellant adds that the 2008 charge, with respect to the illegal apartment, was pertaining to a storage issue and did not involve an occupancy matter; the 2009 charge of Bad Checks was dismissed; and the 2011 charge of Failure to Remove Snow was not his responsibility. The appellant contends that he paid the February 2013 charge of Operating a Motor Vehicle in a Park despite not being the operator of the vehicle at the time the incident occurred; and he paid the summonses with respect to the 2014 and 2015 charges of Failure to Remove Snow. Moreover, the appellant asserts that the May 2014 charge of Theft of Services was dismissed as no items were stolen; and the September 2021 Littering incident was not applicable to him as the matter was a result of mistaken identity.

In support, the appellant provides documentation from the Rutherford Municipal Court indicating that the 2003 Simple Assault charge was dismissed on August 20, 2019, but that he was found guilty of municipal ordinance B.O. 73-2 – Playground and Recreation areas, for which he paid a fine. Documentation from the Old Bridge Police Department and the Automated Complaint System – Charge Disposition Inquiry indicates that the appellant was charged with Theft by Deception

on May 16, 2014 (dismissed), which was downgraded to the charge of Theft of Services – Knowing Services Cost Money on July 1, 2014; and documentation from the Municipal Court of Harrison indicating that he was charged with issuing Bad Checks (dismissed), and pled not guilty; documentation from the Automated Complaint System – Charge Disposition Inquiry – indicating that he was charged on two occasions in 2011 for a Snow Violation, for which he paid fines; and documentation from the Automated Complaint System – Charge Disposition Inquiry, indicating that he was charged in North Arlington with Littering in violation of municipal ordinance 221-3 (dismissed). Moreover, the appellant provides a criminal history background report dated July 22, 2019, from the New Jersey State Police, indicating that he does not have a criminal record.

In response, the DOC and the JJC provide documentation indicating that the appellant was charged with the above listed infractions, and copies of his applications in support of the claims that he did not disclose such charges in response to the questions. Specifically, the JJC states that the appellant falsified question 27 on the employment application, “Have you ever been arrested, indicted, charged with or convicted of a criminal or disorderly offense in this State or any other jurisdiction; and DOC states that the appellant falsified questions 46 and 48 on the employment application, “Have you ever been arrested, indicted, charged with or convicted of a criminal, sexual, or disorderly persons offense in this State or any other jurisdiction as a juvenile or an adult;” and “since the age of 18 years, have you ever received a summons complaint, been arrested, indicted, or convicted for any violation of the law, including fish and game laws, include disorderly persons, petty disorderly persons offenses, city, borough or county ordinances/violations.”

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.

In the instant matter, the appointing authorities argue that the appellant did not disclose pertinent information in response to the questions on the employment applications with respect to the aforementioned charges against him. The appellant argues, in relevant part, that he was never arrested, he was unaware of the 2003 charge, he does not have a criminal background, and he did not intentionally falsify the employment applications. The questions at issue asked applicants to disclose if they had ever been arrested, indicted, charged with or convicted of a criminal, sexual,

or disorderly persons offense as a juvenile or an adult; and if they ever received a summons, complaint, been arrested, indicted, or convicted for any violation of the law, including fish and game laws, disorderly persons and petty disorderly persons offenses, and city, borough or county ordinances/violations.

In this case, the appellant clearly failed to list the required information. The appellant's omissions are sufficient cause to remove his name from the eligible lists. The appellant's contentions that he does not have a criminal background and he did not intentionally falsify the employment application are unpersuasive since it is clear that he failed to disclose requested information in response to the questions on the employment applications. For example, in response to question 27 on JJC's application, "Have you ever been arrested, indicted, charged with or convicted of a criminal or disorderly offense in this State or any other jurisdiction," the appellant answered "yes," and answered "Witness to a theft Rutherford Police 2016. Provided statements. Someone stole from me. Carlstadt Police owned a trucking company people robbed my company 2013." Information pertaining to the aforementioned charges, with respect to the DOC application for the (S9999U) list, under the arrests, convictions, summonses and expunged records section in response to question 46, "Have you ever been arrested, indicted, charged with or convicted of a criminal, sexual, or disorderly persons offense in this State or any other jurisdiction as a juvenile or an adult," the appellant answered "no" and listed "n/a." With respect to the (S9999A) application, in response to question 48 on the application, "Since the age of 18 years, have you ever received a summons complaint, been arrested, indicted, or convicted for any violation of the law, including fish and game laws, include disorderly persons, petty disorderly persons offenses, city, borough or county ordinances/violations," the appellant answered "no" and indicated "n/a."

The type of omissions presented in this matter are clearly significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Further, the fact that he provided documentation concerning the disposition of these charges on appeal does not cure his omission of these items from his employment applications. The appellant's full arrest history is material information that should have been accurately provided on his applications, and the failure to do so constituted falsification of his employment application. In this regard, it must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correction Police Officer, to ensure that his employment application is a complete and accurate depiction of his history. In this regard, 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 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. An applicant must be held accountable

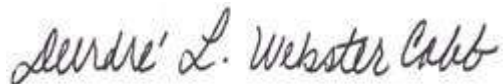
for the accuracy of the information submitted on an application for employment and risks omitting or forgetting any information at his or her peril. *See In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991) (An honest mistake is not an allowable excuse for omitting relevant information from an application). The appellant's failure to disclose the information is indicative of his questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correctional Police Officer. In this regard, the Commission notes that a Correctional Police Officer is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correctional Police Officers, 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 prison guards to present a personal background that exhibits respect for the law and rules. Therefore, there is sufficient basis to remove the appellant's name from the eligible lists.

ORDER

Therefore, it is ordered that these appeals 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 23RD DAY OF NOVEMBER, 2022



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c: Frank Capoano (CSC Docket Nos. 2020-226; 2020-566; and 2022-1000)
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