



STATE OF NEW JERSEY

In the Matter of Lynette Shaw,
Judiciary Clerk 2 (S1462D), Vicinage
15, Gloucester/Cumberland/Salem

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

CSC Docket No. 2024-71

List Removal Appeal

ISSUED: October 11, 2023 (SLK)

Lynette Shaw appeals the decision to remove her name from the Judiciary Clerk 2 (S1462D), Vicinage 15, Gloucester/Cumberland/Salem eligible list on the basis of falsification.¹

The appellant took the open competitive examination for Judiciary Clerk 2 (S1462D), Vicinage 15, Gloucester/Cumberland/Salem, which had an October 21, 2022, closing date, achieved a passing score, and was ranked on the subsequent eligible list. Her name was certified (OS230111) and she was ranked as the 31st candidate. In seeking her removal, the appointing authority indicated that the appellant falsified her application. Specifically, the appointing authority's investigation revealed that the appellant had been found guilty of shoplifting, which she did not disclose on her application.

On appeal, the appellant explains that she had been accused of shoplifting by association. She states that she went to court was advised to plead guilty and pay a fine to have the record removed, which is what she did. The appellant claims that she was unaware that this record existed until now. She presents that she has retained an attorney to have the matter expunged.

¹ While the certification indicated that the appellant was removed for an unsatisfactory criminal record, the appointing authority's letter to the appellant indicated that she was removed based on information that was not disclosed on her application and only revealed after a check of Judiciary systems.

In response, the appointing authority presents that the appellant was informed that she was removed from the subject eligible list for failure to disclose her criminal history. Specifically, she failed to disclose that she pled guilty to shoplifting in 1996. It notes that the appellant does not dispute the shoplifting offense. Based on the appellant's appeal, the appointing authority believes that it is the appellant's position that the expungement of her shoplifting charge should disallow its consideration in the hiring process. However, the appointing authority asserts that whether the shoplifting charge was expunged in 1996 or in the present, is of no consequence, as under *N.J.S.A. 2C:52-27(c)*, even expunged records can be the basis for removal for a position with the Judiciary. The appointing authority emphasizes that its employment application provided ample notice to candidates that the failure to disclose their complete criminal history, including any expunged criminal record, may result in disqualification. It provides that it only discovered the shoplifting charge after searching Judiciary computer systems as part of its regular screening process.

In reply, the appellant states that she was unaware of any charges on her criminal record prior to applying for the subject Judiciary Clerk position. She reiterates that after she learned that the shoplifting charge was on her record, she immediately contacted legal assistance to help investigate further. The appellant asserts that she was not being dishonest and did not fail to disclose any information on her application. She claims that she was unaware of the charge until it was brought to her attention by her attorney. The appellant highlights that the charge is over 30 years old, her attorney advised that the charge could be expunged, and the charge is currently going through the expungement process. She emphasizes that this shoplifting charge had never previously hindered her regarding any employment opportunity.

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. *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 the decision to remove his name from an eligible list was in error.

N.J.S.A. 2C:52-27(c) provides that information divulged on expunged records shall be revealed by a petitioner seeking employment within the judicial branch or with a law enforcement or corrections agency and such information shall continue to provide a disability as otherwise provided by law.

Initially, while this agency advised the appellant that she was removed from the subject eligible list due to an adverse criminal history, the issue in this matter is whether the appellant's failure to disclose the subject shoplifting charge is grounds for removal on the basis of falsification.

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 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.

In this matter, the appellant pleaded guilty to shoplifting in 1996. A review of the appointing authority's application indicates that candidates were required to disclose all crimes. Therefore, even if there was no intent to deceive, the appellant was required to disclose this charge. At minimum, the appointing authority needed this information to have a complete understanding of her background to properly evaluate her candidacy. Therefore, it was appropriate for the appointing authority to remove the appellant's name from the subject eligible list for falsification. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). Moreover, while it appears that the appellant is arguing that she did not believe that she needed to disclose this information because she thought that this charge was not on her record, this argument is not persuasive as the appellant was asked to disclose all crimes on her employment application and not just those that were on her record. Further, while it does not appear that this charge had been expunged from the appellant's record at the time the appointing authority evaluated the appellant's application, even if it had, the appellant still would have been required to disclose the charge as the appointing authority's application advised candidates to disclose their criminal history and all information regarding any expunged records, and this instruction complied with *N.J.S.A. 2C:52-27(c)*. Regardless, the Commission notes that it need not decide whether this shoplifting charge would be sufficient to remove the appellant's name from the subject eligible list based on an unsatisfactory criminal record as the appellant's name was properly removed for falsification.

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 11TH DAY OF OCTOBER, 2023

Allison Chris Myers

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Chairperson
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