

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Emil Imbriano,
Fire Fighter (M1855W), New
Brunswick

CSC Docket No. 2024-158

Request for Reconsideration

ISSUED: October 11, 2023 (PS)

Emil Imbriano, represented by Michael L. Prigoff, Esq., requests reconsideration of the final decision of the Civil Service Commission (Commission), rendered on June 7, 2023, which upheld the removal of his name from the Fire Fighter (M1855W), New Brunswick, eligible list on the basis that he falsified his application.

By way of background, the Commission denied the petitioner's original appeal of his removal from the list on the basis that he had falsified his preemployment application as of the August 2018 closing date. Specifically, it represented that in response to the question on his application, "Have you ever been dismissed or asked to resign from any employment you held?" appellant answered "No". However, records show that he was hired on February 22, 2021, in Middlesex County, sustained an injury on February 25, 2021, and was deemed unfit for duty on March 8, 2021, due to a pre-existing injury. He subsequently resigned on April 29, 2022. Additionally, the appellant did not disclose prior biceps tear surgery from a bowling incident as requested in the background investigation packet. Initially, the Commission noted that the petitioner failed to disclose or attempted to hide or at least downplay his injury, and in doing so, misinformed the appointing authority regarding a key pre-existing impairment. Additionally, regarding Question #38 which requested information about doctors consulted within the past five years, including contact information, dates and reasons for treatment the petitioner stated that he answered correctly and completely with respect to his treatment including the statement, "left and right shoulder. Right bicep."

In his request for reconsideration, the petitioner contends that a clear material error has occurred. Specifically, the petitioner argues that he did not fail to disclose that he had resigned from Middlesex Corrections when he submitted his

application to New Brunswick because he did not resign from the position until nearly a month after he submitted the application. In this regard, he asserts that he informed New Brunswick on April 29, 2022, that he was resigning, and New Brunswick knew that his resignation was in good standing for the purpose of becoming a New Brunswick Fire Fighter. He asserts that a letter dated June 20, 2023, from Joseph Revolinsky, the Division Head of Labor Relations & Compliance, confirms that his resignation was deemed a “Resignation in Good Standing”, and that the County has accepted his resignation effective April 29, 2022. The petitioner maintains that he did not falsely answer Question #38, which asked the petitioner to answer, with respect to doctors consulted within the past five years, providing four pieces of information: names, addresses, dates and reason for treatment. He maintains he answered the question fully and completely with his doctor’s name and address and “Left and right shoulder. Right bicep”. Additionally, regarding Question #37, which asked whether he “had any physical defects (physical and mental) which would interfere with all phases of fire training and firefighting activities and duties,” the petitioner argues that this third basis for the alleged falsification was not properly submitted to the petitioner from the appointing authority. The petitioner argues that these omissions were in no way indicative of a truthfulness issue.

In reply, the appointing authority, represented by Kathryn W. Hatfield, Esq., argues that the petitioner has not satisfied the standard for reconsideration. In this regard, it argues the petitioner failed to disclose incidents in his background history which includes answering “No” to when asked if he had ever been dismissed or asked to resign from any employment held. More importantly it contends that the petitioner failed to disclose prior shoulder surgery and treatment as required for the accuracy of their applications. The appointing authority maintains that based on the inaccuracies of the petitioner’s application, the Commission properly concluded that he did not meet his burden of proof and it had sufficient cause to remove his name from the eligible list. The appointing authority further reiterates the petitioner falsified his application, when answering “No” to Question #37 which sought information regarding any physical defects that would interfere with firefighting training, activities, or duties.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred, or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record in the instant matter reveals that reconsideration is justified for the first issue regarding Question #20 as the petitioner attached a letter showing he Resigned in Good Standing effective April 29, 2023, which was after he submitted

his preemployment application at issue. However, the Commission finds that other reasons for his removal in the prior decision support his removal.

In the instant matter, the petitioner has not met the standard for reconsideration. In the prior matter, the Commission acknowledged that the appointing authority had a valid reason for removing the appellant's name from the list. Specifically, the appellant failed to fully disclose incidents in his background history which include prior biceps surgery. While the petitioner may believe that he did not need to disclose this information, candidates are responsible for accuracy of their applications, *See in the Matter of Harry Hunter* (MSB, decided December 1, 2004). Moreover, the Commission determined even if there was no intent to deceive, given the fact that he did not fully provide that he had prior biceps surgery, his failure to disclose this information was material, as it would be considered essential to an appointing authority's assessment of his ability to perform in the position. Further, contrary to the petitioner's assertion, omissions that are material to an appointing authority's assessment of a candidate would be considered falsification. Additionally, the petitioner has not demonstrated in any way how his failure to receive his actual responses prejudiced him in any way as the Commission described the omissions in its prior decision and he has had full opportunity to explain the omissions. Regardless, the Commission is unpersuaded that the omissions were not material as they bear on the petitioner's character and suitability for a law enforcement position, and, at minimum, were required to allow the appointing authority to fully assess his background. Accordingly, while reconsideration is granted as noted above, the Commission finds no grounds on which to restore the petitioner's name to the eligible list.

ORDER

Therefore, it is ordered that this request be granted, but the prior decision removing the appellant's name from the list be affirmed.

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



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