



CSC
B-27

STATE OF NEW JERSEY

In the Matter of Steven Gardella,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2536

List Removal Appeal

ISSUED: FEB 06 2015 (EG)

Steven Gardella appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that the Department of Corrections (DOC) had presented a sufficient basis to remove his name from the Correction Officer Recruit (S9988R), eligible list due to an unsatisfactory criminal record.

The subject eligible list (S9988R) was promulgated on May 23, 2013 and expires on May 22, 2015. On December 5, 2013, the DOC notified the appellant that his name was being removed from the eligible list on the basis of an unsatisfactory criminal record and falsification of his preemployment application. Regarding his criminal record, it indicated that in March 2000 the appellant had a disposition for 2ND degree aggravated arson for which he received house arrest and two years probation when he was a juvenile. Additionally, for the same incident, the appellant was charged with aggravated assault of a teacher and received house arrest, two years probation and 120 hours of community service. In 2004, as an adult, the appellant was charged with defiant trespass, receiving stolen property and the possession/manufacture of burglar tools. Regarding the falsification of his preemployment application, the DOC indicated that the appellant failed to disclose a second count of aggravated assault stemming from the March 2000 incident as well as failing to list that he had been charged with 2ND degree knowingly and purposely making an explosion. The appellant appealed his removal to CPM arguing that he did list the two counts of aggravated assault and that one was dismissed. He also stated that the penalties were combined as he only received one house arrest and one two-year probation and one order to complete 120 hours of

community service. Further he argued that he was never charged with knowingly and purposely making an explosion. The appellant also explained that these arrests occurred when he was young. He added that since that time, he received a Bachelor's degree, has been employed in the trucking and warehouse industry, and obtained an expungement of all his criminal records. Upon review, CPM upheld the removal of the appellant's name from the subject eligible list.

On appeal, the appellant reiterates his prior arguments as to the disposition of the charges and the combining of the penalties. He also asserts that the defiant trespass, receiving stolen property and the possession/manufacture of burglar tools charges were merged into the defiant trespass charge and were downgraded to a municipal ordinance violation. In support of this contention, the appellant submits copies of the disposition/adjudication forms which he states he also attached to his preemployment application. Further, the appellant claims that he did not include the knowingly and purposely making an explosion charge because he was unaware that he had been so charged. The appellant also reiterates his evidence of rehabilitation.

In response, the DOC reiterates that the appellant should be removed for an unsatisfactory criminal record and argues that his removal is consistent with its pre-employment processing criteria. Additionally, it argues that the appellant showed a lack of respect for the law and for the safety of others by setting a locker in his high school on fire, whereby he endangered the lives of fellow students and faculty. Two faculty members suffered from smoke inhalation. Further, it indicates that while one of the assault charges was dismissed, the appellant was found guilty of the other charge. It also reiterates that the appellant failed to disclose the knowingly and purposely making an explosion charge. In support of its contentions, the DOC submits a copy of the appellant's application and printouts of the charges filed against the appellant and the dispositions. Moreover, DOC states that it strives to select candidates who exhibit a good work ethic and respect for the law as this is imperative to effectively manage the day-to-day operations of a correctional system, and argues that the appellant is not a suitable candidate.

CONCLUSION

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 Civil Service Commission (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.

Further, *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commissioner. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

Additionally, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement." See *N.J.S.A.* 2C:52-3 and *N.J.S.A.* 2C:52-8.

In the instant matter, the DOC argues that the appellant's criminal record is sufficient to remove him from the eligible list. The Civil Service Commission (Commission) disagrees. The record reveals the juvenile arrest occurred 13 years before the certification when the appellant was only 15 years old. The second arrest occurred nine years before the certification. The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. However, taking into consideration the appellant's evidence of rehabilitation, including the expungement of his record, his attainment of a Bachelor's degree and his steady employment and the totality of the evidence in the record, the DOC has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record.

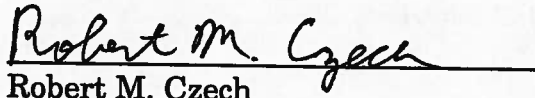
DOC also claims that the appellant falsified his pre-employment application. It provided a copy of the appellant's application to CPM in which the appellant failed to list a 2ND degree knowingly and purposely making an explosion charge and listed the wrong disposition for one of his aggravated assault charges. A review of the application reveals that the appellant did, in fact, not mention the 2ND degree knowingly and purposely making an explosion charge. Further, while the appellant did indicate that he had two aggravated assault charges, he failed to indicate that he was found guilty of one of those charges. Rather, he inaccurately indicated that both of those charges were dismissed. The appellant was required to provide a complete and accurate record of his background for review by the appointing authority as part of the pre-employment process. The record indicates that he failed to do so. In this regard, the Commission notes that the appellant failed to list one of his juvenile offenses on his preemployment application and failed to explain why he did not accurately indicate that he had been found guilty of one of the aggravated assault charges. Moreover, the only reason he provides for not including the knowingly and purposely making an explosion charge was that he was unaware that he had been so charged. However, 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) (A Fire Fighter applicant who alleged he could not recall certain information omitted from an application should be removed from the list since an honest mistake is not an allowable excuse for omitting relevant information from an application). In this regard, the information that the appellant failed to and/or inaccurately disclose is considered material and should have been accurately indicated on his employment application. His failure to disclose this information is indicative of the appellant's lack of integrity and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correction Officer Recruit and the falsification of his preemployment application presents a basis to remove the appellant's name from the eligible list for Correction Officer Recruit (S9988R).

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 4TH DAY OF FEBRUARY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Steven Gardella
James Mulholland
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

April 1, 2014

Steve Gardella

Title: Correction Officer Recruit
Symbol: S9988R
Jurisdiction: Department of Corrections
Certification Number: JU13D01
Certification Date: 05/23/13

Initial Determination: Removal – Unsatisfactory Criminal Record

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. 4A:4-4.7(4)*, which permits the removal of an eligible candidate's name from the eligible list if the eligible has a criminal record which adversely relates to the employment sought.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals & Regulatory Affairs (ARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to ARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

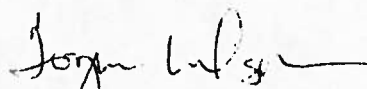
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Steve Gardella
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Address all appeals to:

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Appeals & Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,



Tonjua Wilson
Human Resource Consultant
State Certification Unit

For Joe M. Hill Jr. Assistant Director
Division of Classification & Personnel Management

C James J. Mulholland, Director
File

