



B-73

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of John De Tulio,
Correction Officer Recruit (S9988R),
Department of Corrections

CSC Docket No. 2015-237

Request for Reconsideration

ISSUED: FEB 09 2015 (DASV)

The Department of Corrections requests reconsideration of the attached decision rendered by the Civil Service Commission (Commission) on June 4, 2014, which restored John De Tulio's name to the eligible list for Correction Officer Recruit (S9988R), Department of Corrections.¹

By way of background, the appointing authority sought the removal of De Tulio's name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, due to an unsatisfactory criminal record and falsification of his employment application. Specifically, the appointing authority asserted that De Tulio entered into a 12-month Pre-trial Intervention (PTI) program for three counts of criminal mischief and improper behavior.² The appointing authority also claimed that the appellant falsely answered "no" to question 51 of his employment application which asked candidates whether they "ever had any police contact, been taken into custody, or charged with juvenile delinquency." De Tulio appealed to the former Division of Classification and Personnel Management (CPM),³ but CPM determined that the appointing authority presented a sufficient basis to remove his name from the subject eligible list. De Tulio further appealed to the Civil Service Commission (Commission), maintaining

¹ The eligible list promulgated on May 23, 2013 and expires on May 22, 2015. De Tulio's name was certified on May 23, 2013.

² De Tulio was arrested in December 2003 when he was 18 years old. He then entered PTI in 2004 and completed the program in 2005.

³ CPM is now known as the Division of Agency Services.

that he believed that question 51 referred to juvenile delinquency. He also contended that he answered all questions relating to his adult criminal record and disclosed his participation in PTI. His charges were ultimately dismissed in 2005. The appointing authority replied that the instructions preceding question 51 and the entire "Arrest History" section clearly indicated what information was being sought and what must be disclosed. Moreover, it maintained that the appellant was properly removed from the subject eligible list due his 2003 arrest, which resulted in several charges and entry into PTI. Upon its review, the Commission found that De Tulio did not falsify his employment application. He fully disclosed the 2003 arrest and PTI in a different part of his application. Thus, the Commission noted it was not unreasonable for De Tulio to have misinterpreted question 51. Additionally, the Commission found that De Tulio was not convicted and the charges against him were dismissed after his successful completion of PTI. Further considering the factors set forth in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* regarding De Tulio's arrest, the Commission found that he was arrested in 2003 when he was an 18-year old college student. This arrest occurred approximately nine and one-half years prior to his consideration for appointment and De Tulio had no other arrests in his record. Further, given De Tulio's compliance with the terms of his PTI and the totality of the evidence in the record, including his graduation from college and gainful employment since his release from PTI in 2005, the Commission found no sufficient basis to remove his name from the subject eligible list. Accordingly, it ordered that De Tulio be restored to the Correction Officer Recruit (S9988R), Department of Corrections, eligible list and his name certified at the time of the next certification for Correction Officer Recruit.

In its request for reconsideration, the appointing authority alleges that De Tulio "attempted to practice deception or fraud by intentionally withholding or falsifying the documentation he provided" to the Commission. It states that, upon receipt of the Commission's decision, it scheduled De Tulio for an appointment to continue with preemployment processing. The appointing authority reviewed De Tulio's folder and discovered conflicting paperwork, which it and the Commission did not identify during the original proceedings. The appointing authority indicates that De Tulio supplied the Commission with a copy of pages 1, 17, 18, 19, and 20 of his employment application, which was dated June 10, 2013. However, his original employment application filed with the Department of Corrections on June 13, 2013 during preemployment processing was dated June 12, 2013.⁴ The appointing authority notes that candidates are required to date and initial each page of the 28-page employment application. The June 10, 2013 copy was not initialed by De Tulio and he marked his answers with an "X." In contrast, each page of the June 12, 2013 copy was dated and initialed and De Tulio used checkmarks to answer the questions. Moreover, on page 18 of the June 13, 2013 copy, the appointing authority asserts that De Tulio only listed two of the four charges. The June 10,

⁴ The appointing authority submitted the June 12, 2013 employment application to the Commission as an exhibit to its response to De Tulio's appeal.

2013 copy submitted to the Commission listed three charges. Thus, the appointing authority contends that De Tulio failed to disclose all four of the charges. In that regard, it indicates that De Tulio was served with four separate criminal complaints in December 2003, which charged him with three counts of criminal mischief with damage and one count of improper behavior. Additionally, in April 2004, the appointing authority states that De Tulio was indicted in Superior Court for one count of criminal mischief with damage to the third degree, which resulted in PTI. Furthermore, the appointing authority contends that De Tulio "worded his answers differently" to questions 46 and 53 and the table listed on page 18 in the two versions of his employment application. It alleges that De Tulio did not retain a copy of his June 12, 2013 employment application, and since the application was e-mailed to him, he had the ability to print a blank copy and "re-fill out the questions and answers." The appointing authority claims that De Tulio submitted the June 10, 2013 copy as if it were the original. Therefore, based on the foregoing, the appointing authority maintains that De Tulio attempted fraud. It states that the discrepancies and omissions in De Tulio's documentation are "highly questionable and indicative" of his "lack of integrity and questionable judgment."

In response, De Tulio, represented by John M. Murphy III, Esq., states that although the appointing authority alleges that he misled the Department of Corrections and the Commission, the two copies of the employment application contain the "same information." He emphasizes that he provided "full and complete details" of his "lone arrest" in his employment application. Further, contrary to the appointing authority's claim that he listed only some of the charges, De Tulio indicates that three of the charges are duplicative and arise from the same statute. He maintains that he was arrested one time and, while there are four complaints, the matter was resolved under one accusation. Moreover, De Tulio argues that the appointing authority has failed to show that a "slightly different" copy of his application would change the outcome of the case or that a clear material error occurred which would warrant reconsideration of this matter by the Commission. In contrast, he states that he "merely turned over the rough draft of his employment application to counsel to file his appeal." Further, he points out that there is no reason for the appointing authority not to have raised its argument regarding the employment application during the original proceedings. Additionally, De Tulio submits that the appointing authority has not demonstrated how the foregoing would affect the factors for removal. He reiterates that he was arrested only once when he was an 18-year old college student and successfully completed PTI. He is currently 29 years old and lives in Colts Neck, New Jersey, with his family. Therefore, he maintains that removal of his name "without proper consideration of these factors is arbitrary and capricious."

In response, the appointing authority asserts that at no time during his appeal did De Tulio or his attorney convey that the employment application he presented to the Commission was a "rough draft." It reiterates that De Tulio was

required to provide a complete and accurate record of his background and he failed to do so. The appointing authority maintains that if the Commission considered the rough draft, then the decision to restore De Tulio's name was based on "invalid and incorrect information." Moreover, the appointing authority states that it does not question whether the submitted copy of the employment application would change the outcome of the case. Rather, it questions De Tulio's judgment and integrity. Furthermore, the appointing authority disputes that there are only "slight differences" in the two copies. It contends that all charges were to be listed, whether they are duplicate, multiple, or merged charges resulting in one arrest. The appointing authority also notes that it is permitted to review an applicant's entire background regardless of whether charges have been dismissed or expunged. In this case, it maintains that it was within its "statutory right" to consider De Tulio's dismissed charges. Accordingly, the appointing authority submits that De Tulio should be removed from the subject eligible list, as he is not a suitable candidate.

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.

In the instant matter, the appointing authority has identified a discrepancy in De Tulio's original appeal, namely that he supplied the Commission with a version of his employment application which differs from the one submitted to the appointing authority. Given that the appointing authority only recognized this information upon attempting to comply with the Commission's prior decision, it requests reconsideration of this matter. However, this discrepancy does not change the outcome of the case.

Initially, the appointing authority describes the differences between the two copies of the employment application and alleges that De Tulio attempted fraud. However, in response, De Tulio admits that it was a different version, as it was a "rough draft." The appointing authority contends that De Tulio never reported that it was a "rough draft." However, it is apparent that neither his attorney nor De Tulio realized that it was the earlier version of his employment application that was submitted with his appeal. Upon review of the copy, it is clear that it was an unfinished application, dated before the other copy and prior to the day of De Tulio's preemployment processing with the individual pages not initialed or dated. Furthermore, this discrepancy was not the focus of the falsification claim. Thus, it is reasonable that neither party recognized this oversight at the time. As to the appointing authority's allegation, there is nothing in the record to suggest that De

Tulio's submission of the prior draft was somehow fraudulent, namely that he attempted to "re-fill out the questions and answers." It was merely an inadvertent error to have submitted that copy. Moreover, and more importantly, this information does not change the outcome of the case. Both versions of the employment application were in the record upon the Commission's review of De Tulio's list removal. Further, De Tulio reported his 2003 arrest and the charges on both versions. While he did not list each charge separately, the Commission cannot find that he falsified his application. In that regard, *N.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. In De Tulio's case, he was asked to report the "Nature of Charges, Arrest(s) or Convictions(s)," which he did by noting that he was charged under two different statutes based on one arrest.

Moreover, the Commission previously reviewed De Tulio's arrest pursuant to the factors set forth in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* and did not find a sufficient basis to remove his name from the subject eligible list based on his criminal record. In the instant matter, the appointing authority has not demonstrated that a material error has occurred or presented new evidence regarding De Tulio's arrest for reconsideration to be granted or that he in fact falsified question 51 of his application as addressed in the prior decision. The appointing authority merely states that it has a right to review dismissed charges.⁵ Accordingly, the Commission finds no grounds on which to grant reconsideration of its prior decision.

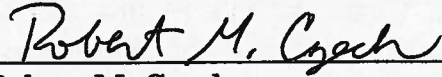
ORDER

Therefore, it is ordered that this request for reconsideration be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

⁵ While the Commission does not find that De Tulio's background or the issues raised in the instant matter warrant his removal, the appointing authority can consider De Tulio's arrest record and its assessment on his suitability for the position as factors in bypassing his name on the subject eligible list pursuant to *N.J.S.A. 11A:4-8*, *N.J.S.A. 11A:5-6*, and *N.J.A.C. 4A:4-4.8(a)3i*, the Rule of Three.

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
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Attachment

c: John De Tulio
John M. Murphy III, Esq.
James Mulholland
Kenneth Connolly



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of John De Tulio,
Correction Officer Recruit (S9988R),
Department of Corrections

CSC Docket No. 2014-1634

List Removal

ISSUED: JUN 09 2014 (DASV)

John De Tulio, represented by John M. Murphy III, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM), which upheld the removal of his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, due to an unsatisfactory criminal record.

By way of background, the appellant, a nonveteran, took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score, and was ranked on the subsequent list. The appellant's name was certified on May 23, 2013. In disposing of the certification, the appointing authority sought the removal of the appellant's name due to an unsatisfactory criminal record and falsification of his employment application. Specifically, the appellant was notified by letter, dated July 22, 2013, that his name was removed from the subject eligible list due to his entry into a 12-month Pre-trial Intervention (PTI) program¹ for three counts of criminal mischief, one of which was a third degree crime,² and improper behavior. Moreover, the appointing authority asserted that the appellant falsely answered "no" to question 51 of his employment application which asked candidates

¹ The appointing authority noted incorrectly that the appellant entered PTI in 1998. The appellant was actually arrested in December 2003 when he was 18 years old. He then entered PTI in 2004 and completed the program in 2005.

² The Order of Dismissal and the appellant's New Jersey Criminal History noted a third degree criminal mischief charge, although the appointing authority referenced a fourth degree crime in its removal notice to the appellant.

whether they "ever had any police contact, been taken into custody, or charged with juvenile delinquency." The appellant appealed to CPM, claiming that he had no intention of falsely answering the question. He believed that the question referred to juvenile delinquency and emphasized that he disclosed his adult arrest which occurred in 2003. However, CPM determined that the appointing authority presented a sufficient basis to remove the appellant's name from the subject eligible list due to his criminal record.

On appeal to the Civil Service Commission (Commission), the appellant reiterates that he did not falsify his application. He cites laws which he argues demonstrate that juveniles are not arrested, but rather, they are "taken into custody." Thus, he maintains that he properly interpreted question 51 to refer to juvenile delinquency. Moreover, he emphasizes that he answered all questions relating to his adult criminal record and disclosed his participation in PTI. The appellant states that he completed PTI and the charges against him were ultimately dismissed in 2005. In this regard, he submits the Order of Dismissal, issued by the Superior Court of New Jersey on June 16, 2005, which accepted the recommendation of the PTI Project Director to dismiss the charge of "Criminal Mischief 2C:17-3a(1) 3rd degree." The appellant's New Jersey Criminal History also notes the dismissal of the other charges, which were disorderly persons offenses, as a result of his successful completion of PTI. Thus, the appellant contends that he was not being deceitful or misleading in his employment application. As to his criminal record, the appellant initially notes that there was "no written consideration" in CPM's decision regarding the factors set forth in *N.J.A.C. 4A:4-4.7* as to whether his removal from the subject eligible list was proper. Moreover, he states that he was an 18-year old college student at the time of his arrest, which was his only arrest. He has not had any "criminal contacts before or since the isolated incident." The appellant is now 29 years old "and has moved forward with his life." It is noted that the appellant's employment application indicates that he graduated from William Paterson University in 2011 with a Bachelor's degree in Criminal Justice and is employed with the Hackensack University Medical Center as a Service Agent. He also lists employment in various positions since 2005. The appellant contends that "[e]xamination of the above factors allows for arrival only at the conclusion that [he] should remain eligible for employment as a corrections officer." Accordingly, the appellant indicates that the removal of his name was "arbitrary and capricious."

In response, the appointing authority submits that the appellant answered "no" to question 51 of the employment application despite having police contact and being taken into custody. It indicates that the instructions preceding question 51 and the entire "Arrest History" section clearly indicates what information is being sought and what must be disclosed. The appointing authority further states that, despite the outcome of the charges, the appellant was required to disclose all of his charges. As to the appellant's criminal record, the appointing authority contends

that candidates are informed of its criteria for removal in the employment application (and in the on-line examination announcement) and participation in PTI "automatically disqualified" the appellant from consideration. Therefore, it asserts that the appellant was properly removed from the subject eligible list due his 2003 arrest, which resulted in several charges and entry into PTI. Accordingly, the appointing authority maintains that the appellant is not a suitable candidate and should be removed from the subject eligible list.

It is noted that the appointing authority submits the 2003 complaints against the appellant, which alleged that the appellant purposely caused or recklessly created "the risk of inconvenience, annoyance or alarm by creating a hazardous condition by acts which served no legitimate purpose of the defendant, specifically by, on numerous occasions, throwing containers filled with urine into the Blanton Hall cafeteria at Montclair State University." The appellant was also issued a separate complaint, charging him with a fourth degree crime for damaging tangible property and causing pecuniary loss to the State of New Jersey, regarding the food services equipment of the cafeteria. In addition, the appellant was charged with "criminal mischief by purposely or knowingly damaging tangible property . . . and causing pecuniary loss . . . by throwing a twenty four inch piece of wood at the windshield" of a vehicle located at Montclair State University. Additionally, the appellant was alleged to have thrown rocks and various objects on the windshield of another vehicle.

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. Additionally, *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 eligible 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 of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, juvenile detention officer, firefighter

or judiciary titles and other titles as the Chairperson of the Commission or designee may determine.

Moreover, *N.J.S.A.* 11A:4-10 provides that an eligible for a law enforcement, fire fighter or correction officer title may be questioned as to any arrest. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. For example, in *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992), 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. Additionally, *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 an appointment. *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.

Initially, there is no basis to find that the appellant falsified his employment application. In this regard, and importantly, the 2003 arrest and PTI were fully disclosed in a different part of his application. Given this fact, it was not unreasonable for the appellant to have misinterpreted question 51. Therefore, the Commission does not find that the appellant made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. See e.g., *In the Matter of Miguel Vega* (CSC, decided December 18, 2013).

Regarding his criminal record, the appellant was not convicted and the charges against him were dismissed after his successful completion of a PTI program. However, the appellant was arrested and the factors enumerated in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 are to be considered. Initially, the Commission notes that it is not bound by the appointing authority's criteria for removal. See e.g., *In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005) (The appointing authority argued that its pre-employment processing criteria with respect to applicant driving records required it to remove appellant from the list. It was noted that the Merit System Board was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented.) See also, *In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

The record reveals that the charges and circumstances surrounding the appellant's arrest are serious. While participation in a PTI program is neither a conviction nor an acquittal, it has not been construed to constitute a favorable

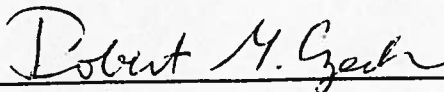
termination. *See N.J.S.A. 2C:43-13(d). See also Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). Further, the appellant was not a minor when the incident occurred, nor does the record show that the arrest was expunged. *See In the Matter of J.B.*, 386 N.J. Super. 512 (App. Div. 2006) (An expunged record may show evidence of rehabilitation). Nonetheless, the appellant was arrested in 2003 when he was an 18-year old college student. This arrest occurred approximately nine and one-half years prior to his consideration for appointment and the appellant has had no other arrests in his record. The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correction Officer Recruits to present a personal background that exhibits respect for the law and rules. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). However, taking into consideration that the appellant's arrest was an isolated incident that occurred in 2003, the fact that he complied with the terms of his PTI, and the totality of the evidence in the record, including the appellant's graduation from college and his gainful employment since his release from PTI in 2005, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record. Accordingly, the appellant has met his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name certified at the time of the next certification for Correction Officer Recruit, for prospective employment opportunities only.

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 JUNE, 2014



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**Henry Maurer
Director
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Attachment

**c: John De Tulio
John M. Murphy III, Esq.
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
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Robert M. Czech
Chairman, Executive Officer

December 9, 2013

John DeTulio

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.

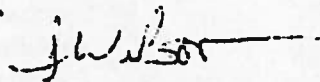
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, 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.

John DeTullo
Page 2

Address all appeals to:

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Sincerely,



Tonjua Wilson
Human Resource Consultant
State Certification Unit

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

C James J. Muhlolland, Director
File