



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Seth Anfield  
Correction Officer Recruit (S9988R)

List Removal Appeal

CSC Docket No. 2016-2549

ISSUED: **NOV 30 2016** (ABR)

Seth Anfield, represented by Richard J. Albanese, Esq., appeals the decision of the appointing authority to remove the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections eligible list on the basis of an unsatisfactory background report, unsatisfactory employment record, making a false statement of material fact, and failure to complete pre-employment processing.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score, and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 23, 2013, and expired on July 3, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background report, unsatisfactory employment record, making a false statement of material fact, and the appellant's failure to complete pre-employment processing.

On appeal to the Civil Service Commission (Commission), the appellant argues that he provided all of the requisite information during the hiring process and that any deficiencies in his submissions to the appointing authority stemmed from flaws in its background investigation procedures. The appellant contends that his arrest and termination from employment were minor transgressions and should not bar him from employment because he has shown remorse and has not continued his drug use. In his appeal, the appellant acknowledges that he did not originally list his arrest for Driving While Intoxicated (DWI) in violation of *N.J.S.A. 39:4-50* on the Background Investigation Questionnaire (Questionnaire) submitted to the appointing authority dated June 19, 2015, but stresses that he explained the arrest

to the appointing authority's background investigator by email on October 7, 2015. As to the facts of the arrest, the appellant contends that the driver of the subject vehicle falsely stated that the appellant was the driver. The appellant explains that he did not believe he had to submit to a breathalyzer because he was the passenger of the vehicle in question, but acknowledges in his appeal that, in hindsight, he nevertheless should have agreed to the breathalyzer test. The appellant admits that he was terminated from employment as a school bus driver in 2009 due to a positive marijuana test, but stresses that he was only in his early 20s at the time, has maintained a commercial driver's license and gainful employment as a school bus driver since 2010, and is subject to regular drug testing as a requirement of his current employment. With respect to pre-employment processing, the appellant emphasizes that during the home interview he provided all required information to his background investigator, aside from a firearms identification card, and argues that the investigator ignored information provided by email shortly thereafter. Specifically, the appellant cites an email from October 7, 2015, with an application reference number and a statement that he was waiting for the card to be issued.

In its response dated March 10, 2016, the appointing authority argues that it appropriately removed the appellant's name from the eligible list on the basis of a background that adversely relates to the Correction Officer Recruit position, falsification of his application, and his failure to complete the pre-employment process. Citing *N.J.A.C.* 4A:4-4.7(a), the appointing authority argues that an eligible can be denied an appointment for sufficient reasons. The appointing authority submits a copy of the appellant's Questionnaire, in which the appellant answered "no" to question 46, which asks if the applicant was ever arrested. Here, the appointing authority maintains that the appellant was arrested and charged with several offenses, including DWI in violation of *N.J.S.A.* 39:4-50<sup>1</sup>, on January 20, 2013, and was ultimately convicted of Refusal to Submit to a Breath Test in violation of *N.J.S.A.* 39:4-50.2. The appointing authority emphasizes that the appellant did not disclose this arrest until sending an email on October 7, 2015, to the background investigator, well after both the application date and the October 1, 2015, home interview with the investigator. It stresses that the appellant failed to cooperate with police during the arrest and submits a copy of the arrest report, which indicates that the appellant refused to provide his middle name, marital status, telephone number, employer information, or the name or address of his nearest relative. The appointing authority also argues that the appellant's termination from employment as a bus driver in 2009 due to a positive marijuana test further supports the appellant's removal from the eligible list, citing its zero-tolerance drug policy. The appointing authority adds that the appellant did not complete its pre-employment process by failing to produce a firearms identification

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<sup>1</sup> In support of its response, the appointing authority submits a copy of the Uniform Arrest Report dated January 20, 2013, which states that the appellant was issued summonses for the following offenses: driving while intoxicated, refusal to take a breath test, reckless driving, and driving without required insurance coverage.

card at the time of his home interview as required. Instead, he informed the investigator that he had such a card approximately eight years before, but no longer possessed it. The appointing authority further states that the appellant did not elaborate as to why he lacked the card or indicate that he was waiting for a new one until sending an email to that effect on October 7, 2015.

In reply, the appellant stresses that the appointing authority does not dispute that he disclosed all incidents to its investigator and attacks the background investigation as "sloppy and inaccurate." The appellant also emphasizes that the arrest occurred over three years before the date of his reply and that his termination from employment, due to a positive marijuana test, was over seven years prior to the reply date. The appellant reiterates that he advised his investigator of the nature of his arrest both verbally and in writing. The appellant also states that he thought that the arrest was only for a traffic offense and that he mistakenly believed that he did not have to answer "yes" to the arrest history question on that basis. He also stresses that in the court proceeding he was found not to be the driver of the subject vehicle and that the DWI charge was dismissed. The appellant also states that he currently serves as a manager for a transportation company, oversees 63 employees, and is responsible for all testing and certifications required by the Department of Transportation, including drug testing. The appellant argues that the background investigator ignored his home interview statement about waiting on a replacement firearms identification card to be issued and the fact that he subsequently provided an ORI number in the October 7, 2015, email. The appellant also argues that his appeal should be granted as a matter of course because the appointing authority did not submit a timely response to the Commission's request for arguments and additional supporting documents in support of the appellant's removal from the eligible list.<sup>2</sup> Additionally, the appellant requests a hearing in this matter in order to present his arguments and demonstrate his remorse in person.

### CONCLUSION

The appellant requests a hearing in this matter. List removal appeals are treated as reviews of the written record. See *N.J.S.A.* 11A:2-6b. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C.* 4A:2-1.1(d). For the reasons explained below, no material issue of disputed fact has been presented which would require a hearing. See *Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

*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 has

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<sup>2</sup> The Commission's letter to the appointing authority was dated February 11, 2016. The appointing authority's response was dated March 10, 2016.

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.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 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, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. 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).

*N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)7*, allows the Commission to remove an eligible's name from an eligible list on the basis of a prior employment history that relates adversely to the position sought.

*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 appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). *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 name from an eligible list was in error.

As a threshold matter, the Commission notes that the appointing authority's response to the appellant's appeal more than 20 days after the date the Commission sent notice of the appeal to the appointing authority does not require the Commission to grant the appeal as a matter of course. The regulations applicable to a list removal appeal do not impose a strict deadline for a response by an appointing authority. See *N.J.A.C. 4A:4-6.3*. Accordingly, the timing of the appointing authority's response does not preclude the Commission from reviewing the appellant's list removal appeal on the merits.

In this matter, a review of the record indicates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list based on a false statement of material fact. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correction Officer Recruit, 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 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 appointing authority argues that although the appellant was arrested for DWI in 2013, he did not list that arrest on the Questionnaire. In support, the appointing authority provides a copy of the Uniform Arrest Report which shows that the appellant was arrested for DWI on January 20, 2013. Thus, it is clear that the appellant failed to disclose that material fact on the Questionnaire. The appellant highlights the fact that he disclosed the arrest to the background officer in an email dated October 7, 2015—shortly after the home interview on October 1, 2015. The appellant also claims that he did not answer "yes" to question 46 on the Questionnaire because he thought the arrest was only for a traffic offense and that such an arrest would not have to be listed. The "Arrest History" section of the Questionnaire broadly defines "arrest" to include "any detaining, holding, or taking into custody by police or other law enforcement agency." Even if the appellant genuinely believed that an arrest for a traffic offense did not have to be disclosed, this broad language shows that his conclusion was unreasonable. Furthermore, by waiting until after the home interview with the background investigator to disclose the arrest and conviction—approximately three-and-a-half months after the date of

the Questionnaire—the appellant deprived the appointing authority of a meaningful opportunity to investigate the underlying facts and circumstances in the course of its background inquiry and the home interview. Thus, even with the late disclosure by the appellant, his removal from the eligible list by the appointing authority based on a falsification of his arrest history in the Questionnaire was proper.

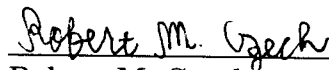
The appellant's unsatisfactory employment record, namely the appellant's 2009 termination due to a positive drug test for marijuana also supports his removal from the eligible list. The appellant does not dispute the fact that he was fired for a positive marijuana test. The job specification for Correction Officer Recruit defines the duties of the position as tracking the number of inmates, escorting inmates to and from their quarters, patrolling assigned areas of the buildings and grounds, making required reports and assisting in controlling the general conduct and behavior of inmates who are gathered in groups. Clearly, termination from prior employment due to a positive drug test reflects poorly on the appellant's ability to perform these law enforcement duties. Accordingly, the falsification of the appellant's application and his unsatisfactory employment record provide sufficient bases to remove the appellant's name from the eligible list. It is, therefore, unnecessary to determine whether his unsatisfactory background report or his failure to complete the pre-employment process would also support the removal of his name from the eligible list.

### 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 23<sup>RD</sup> DAY OF NOVEMBER, 2016

  
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