



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael LaPosta,  
County Correction Officer (S9999R),  
Essex County

List Removal Appeal

CSC Docket No. 2016-1923

ISSUED: **NOV 29 2016** (HS)

Michael LaPosta, represented by Annette Verdesco, Esq., appeals the removal of his name from the eligible list for County Correction Officer (S9999R), Essex County on the basis of falsification of his pre-employment application.

The appellant, a nonveteran, took and passed the open competitive examination for County Correction Officer (S9999R), which had a closing date of September 4, 2013. The resulting eligible list promulgated on May 2, 2014 and expires on May 1, 2017.<sup>1</sup> The appellant's name was certified to the appointing authority on February 20, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he falsified his pre-employment application. Specifically, the appointing authority asserted that in response to the question, "Have you ever been arrested in New Jersey or any other State?" the appellant answered, "No." However, the appointing authority's background investigation, including a request to the State Bureau of Identification for criminal history record information, revealed that the appellant, then a juvenile of 17 years, had been arrested for a 2001 incident for the following offenses: aggravated assault in violation of *N.J.S.A. 2C:12-1B(1)*; terroristic threats in violation of *N.J.S.A. 2C:12-3*; criminal mischief in violation of *N.J.S.A. 2C:17-3B*; and harassment in violation of *N.J.S.A. 2C:33-4B*. The disposition of these charges was unavailable.

<sup>1</sup> The expiration date of the subject eligible list was extended one year, to May 1, 2017.

On appeal to the Civil Service Commission (Commission), the appellant initially argues that the appointing authority did not adequately support its request to remove his name from the subject eligible list. Although he acknowledges being charged, he does not recall being arrested or the disposition of the charges.<sup>2</sup> He claims that he was advised by appointing authority personnel not to include juvenile matters since they are not relevant to the question in issue. The appellant also contends that the question in issue is vague in that it generally poses the question of whether the applicant has ever been arrested without specifically asking whether the applicant was arrested or ever adjudicated delinquent *as a juvenile* (emphasis supplied by appellant). He thus argues that it is reasonable to conclude that he did not interpret the question to include juvenile arrests and only concluded that the question encompassed adult arrests and convictions. The appellant further contends that it is reasonable to conclude that he did not read the question to encompass juvenile arrests since juveniles in New Jersey cannot be convicted of a "crime" but rather are "adjudicated delinquent." He notes that a purpose of the New Jersey Code of Juvenile Justice is "[t]o preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of juveniles coming within the provisions of this act." *N.J.S.A. 2A:4A-21(a)*. Nevertheless, the appellant offers the following argument in the event the non-disclosure of the prior juvenile arrest is deemed relevant: the offense involved a domestic altercation with his older brother while he was a juvenile and the incident was clearly an isolated incident evidenced by the fact that he has led a blemish-free and law-abiding life since the 2001 incident. Thus, the appellant maintains that his juvenile arrest cannot be deemed to be adversely related to the employment sought. He also requests a hearing.

The appointing authority, despite being provided the opportunity, did not present any arguments or documentation for the Commission's review.

### 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 that 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 that 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 made a false statement of any material fact or attempted any deception or fraud in

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<sup>2</sup> Documentation from the Family Automated Case Tracking System, submitted by the appellant in this matter, indicates that the appellant's case was referred to the Family Crisis Intervention Unit.

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 an appointing authority's decision to remove his name from an eligible list was in error.

In the instant matter, the appointing authority asserted that although the appellant was arrested in 2001, he did not disclose the arrest on his pre-employment application. In this regard, the appointing authority's background investigation, which included the results of a request to the State Bureau of Identification for criminal history record information, indicated that the appellant, as a juvenile of 17 years, had been arrested for a 2001 incident. Charges for aggravated assault, terroristic threats, criminal mischief and harassment resulted. The appellant contends that he was advised by personnel of the appointing authority not to include juvenile matters; that the relevant question was vague because it did not specifically ask for juvenile arrests; that the question could reasonably have been interpreted not to include juvenile arrests since juveniles are adjudicated delinquent rather than criminally convicted; and that the New Jersey Code of Juvenile Justice seeks to preserve family unity and provide for juveniles' care, protection and development. These arguments are unpersuasive. The claim of advice not to include juvenile matters is unsubstantiated. Moreover, the relevant question was stated as follows: "Have you *ever* been arrested in New Jersey or any other State (emphasis added)?" The question clearly sought disclosure of any arrest in this or another State, and juvenile arrests would be within the scope of the question. Thus, it is clear that the appellant failed to disclose his arrest on his pre-employment application. While the appellant also states that he does not recall being arrested, it must be emphasized that it is the responsibility of an applicant, particularly an applicant for a sensitive position such as a County Correction Officer, to ensure that his pre-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).

In this case, the appellant's omission is sufficient cause to remove his name from the eligible list. The appellant failed to disclose this information on his pre-employment application. Further, the pre-employment application clearly sought disclosure of all arrests in this or another State. The type of omission presented is

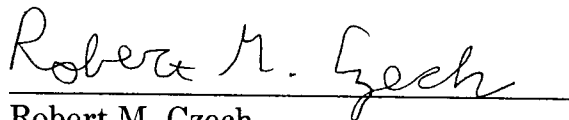
significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Indeed, an appointing authority's assessment of a prospective employee could be influenced by such information, especially for a position in law enforcement. Therefore, the information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his pre-employment application. The appellant's failure to disclose the information is indicative of his questionable judgment. Such qualities are unacceptable for an individual seeking a position as a County Correction Officer. In this regard, the Commission notes that a County Correction Officer is a law enforcement employee who must help keep order in prisons and promote adherence to the law. County Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects prison guards to present a personal background that exhibits respect for the law and rules. Therefore, there is a sufficient basis to remove the appellant's 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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