

STATE OF NEW JERSEY

In the Matter of Christopher Walters,
Police Officer (S9999R), Berkeley
Township

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-2057

List Removal Appeal

ISSUED: **NOV 28 2016** (SLK)

Christopher Walters, represented by Anthony J. Fusco, Jr., Esq., appeals the attached determination of the Division of Agency Services (Agency Services) upholding the removal of his name from the eligible list for Police Officer (S9999R), Berkeley Township, on the basis of an unsatisfactory background report and falsification of his application.

By way of background, the appellant's name appeared on certification OL140526 as a veteran in the 7th position that was issued to the appointing authority on May 2, 2014. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory background report and falsified his application. Specifically, the background report indicated, among other concerns, that the appellant pled guilty to a 2007 underage drinking charge, was charged with an open container of alcohol in 2008 which was dismissed, and pled guilty to a 2010 public urination charge. His driving record also indicated a 2012 violation for driving in a High-Occupancy Vehicle (HOV) lane, a violation in 2012 for obstruction of passage of other vehicles, and a 2013 violation for unsafe operation of a vehicle. Additionally, the appellant failed to disclose on his application a 2009 violation for failure to maintain lane and a 2010 violation for speeding. The appellant appealed the matter of the removal of his name from the subject list to Agency Services, which found that the appointing authority sustained its request.

On appeal, the appellant presents that the three criminal charges were for disorderly persons offenses, one of which was dismissed. He contends that these are minor offenses that do not adversely relate to the position sought. With respect to

his motor vehicle abstract, he indicates that there were five issues, one of which was out-of-state. Specifically, with respect to the 2013 motor vehicle accident, the appellant states that the driver of the other vehicle did not signal that she was turning and came to a complete stop in the signal lane. He then waited there for 20 seconds and then attempted to drive around another vehicle and then the driver decided to turn abruptly and hit the middle of his van. In reference to the 2012 charge, he explains that he was driving in heavy traffic and switched lanes, and upon switching lanes, an emergency vehicle was proceeding on the shoulder. He highlights that there are no points listed on his current motor vehicle abstract. With regard to the March 2010 speeding and the 2009 failure to maintain lane violations that he did not disclose on his application, he presents that he forgot to disclose these charges because they occurred 5 and 6 years ago and that he had no reason to deliberately hide this information as he knew that the appointing authority would check his motor vehicle record.

Although given the opportunity, the appointing authority did not submit any further information or arguments for the Civil Service Commission (Commission) to consider.

CONCLUSION

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. 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:4-4.7(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.

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.

In the instant matter, the appointing authority had sufficient reason to remove the appellant's name from the subject eligible list. The appellant was charged with three disorderly persons offenses, including two where he pled guilty and one was at age 21 in 2010, which was only three years prior to the subject examination closing date. Although the appellant's arrests and convictions were for disorderly persons offenses and cannot give rise to the disability arising under *N.J.A.C. 4A:4-4.7(a)4*, the fact that the appellant was involved in such activity reflects upon his character and his ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002). Moreover, he has five separate driving incidents where he either pled or was found guilty including an incident as recently as July 6, 2013 which is only 2 months prior to the examination closing date.

Additionally, the appellant failed to disclose two of the five driving incidents on his application. Although the appellant argues that he did not intend to deceive the appointing authority and simply forgot these incidents, 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 his 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. It is also noted that the appellant is responsible for the accuracy of his application. See *In the Matter of Harry Hunter* (MSB, decided December 1, 2004). The information that the appellant failed to disclose is considered material and should have been accurately indicated on his employment application. The appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Police Officer. These two omitted moving violations, along with the three that were disclosed, could be considered as evidence of a pattern of disregard for the motor vehicle laws and the exercise of poor judgment. Therefore, at minimum, these violations needed to be disclosed so that the appointing authority could do a proper investigation and make its own determination with complete information as to whether or not the appellant possesses the character and judgment to be a municipal Police Officer.

Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an 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 municipal Police Officers to present a personal background that exhibits respect for the law and rules. Therefore, when viewed in totality, the appointing authority had sufficient reason to conclude that the appellant falsified his application and had an unsatisfactory background to be a municipal Police Officer.

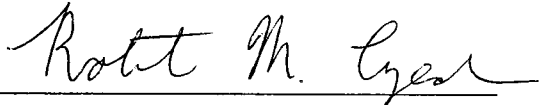
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999R) eligible list

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 23rd DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

- c: Christopher Walters
- Anthony J. Fusco, Jr., Esq.
- John A. Camera
- Kelly Glenn



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

December 3, 2015

Anthony J. Fusco
Fusco & Macaluso, LLC
PO BOX 838
150 Passaic Ave
Passaic, NJ 07055

Initial Determination: Removal – Unsatisfactory Background Report – Christopher Walters – OL140526

Dear Mr. Fusco:

This is in response to your correspondence regarding the removal of your client's name from the above eligible list.

This office sent to you the information utilized by the Appointing Authority justifying their decision to remove your name in a letter dated July 6, 2015. You were informed in that letter that you had until July 31, 2015 to submit your appeal arguments. You then asked for, and were granted, an extension until September 18, 2015. To date, we have not received a formal appeal from you or your client. The time period to submit arguments has now elapsed and we therefore have made our determination based on the information submitted by all parties.

The Appointing Authority requested removal of your client's name in accordance with N.J.A.C. 4A:4-4.7(a)11, which permits the removal of an eligible candidate's name from the eligible list for "valid reasons as determined by the Chairperson of the Civil Service Commission or designee".

In support of its decision, the Appointing Authority provided a narrative detailing infractions found on Mr. Walters' driving abstract. The Appointing Authority notes that Mr. Walters failed to disclose several items in his application, including several moving violations on his abstract and that he also disclosed that he had been arrested several times as a juvenile for alcohol-related incidents.

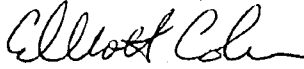
After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore Mr. Walters' name to the eligible list. Therefore, the Appointing Authority's decision to remove his name has been sustained and the appeal is denied.

In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of 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 DARA. 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 (C44:10-55 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.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,

Elliott Cohen
Human Resource Consultant
Local Placement Services

Christopher Reid
Berkeley Township
PO Box B
Bayville, NJ 08721