



STATE OF NEW JERSEY

In the Matter of Gregory Shultz, Jr.,
Police Officer (S9999R), Township of
Hazlet

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-1665

List Removal Appeal

ISSUED: **NOV 3 0 2016** (JET)

The Township of Hazlet, represented by Ashley F. Malandre, Esq., appeals the attached decision of the Division of Agency Services (Agency Services), which found that there was sufficient basis to restore Gregory Shultz, Jr.'s, name to the Police Officer (S9999R), Township of Hazlet, eligible list.

By way of background, in a prior but related matter, the appointing authority removed Mr. Shultz's name from the Police Officer (S9999M), Township of Hazlet, eligible list on the basis that he failed to complete pre-employment processing. Shultz subsequently appealed to the Civil Service Commission (Commission) and in its determination, found that Shultz's name was properly removed from the list on the basis of unavailability or refusal to accept appointment. The appointing authority argued that the appellant failed to have a medical and psychological examination. However, the appointing authority confirmed that he attended the Training Academy for County Correction Officers in Monmouth County during the time he was supposedly incapacitated and unable to complete the medical and psychological examinations needed in order to participate in the Police Academy. In support, the appointing authority provided documentation indicating that the appellant's physical fitness increased during the 14-week County Correction Officer training course. Moreover, the appointing authority argued that the appellant's "lack of candor" was sufficient to remove his name from the list. *See In the Matter of Gregory Shultz, Jr., Police Officer (S9999M), Township of Hazlet* (CSC, decided February 12, 2014).

In the instant matter, Shultz took the open competitive examination for Police Officer (S9999R), Township of Hazlet, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified to the appointing authority on May 19, 2014. In disposing of the certification, the appointing authority requested the removal of Shultz's name on the basis of an unsatisfactory background report. Specifically, the appointing authority asserted that, due to the circumstances presented in the February 12, 2014 Commission decision pertaining to his removal from the S9999M list, Shultz's background was sufficient to remove his name from the Police Officer (S9999R) eligible list. Shultz appealed the matter to the Division of Agency Services (Agency Services), which found that he had presented a sufficient basis to restore his name to the subject eligible list.

On appeal to the Commission, the appointing authority maintains that Shultz's name should be removed from the eligible list due to an unsatisfactory background report. Specifically, the appointing authority reiterates that, in the prior matter, Shultz was interviewed for the position of Police Officer (S9999M) in July 2013 and was required, as a part of a conditional offer of employment, to pass a medical and psychological examination. The appointing authority avers that, on July 25, 2013, Shultz stated that he would not appear for and would not be able to pass a medical examination due to an injury that he had allegedly sustained in his right shoulder in June 2013. Further, the appointing authority explains that, at the time he was interviewed for the position of Police Officer in July 2013, Shultz did not disclose that he had a pre-existing injury in his shoulder. The appointing authority asserts that, although Shultz's physical performance at the Monmouth County Corrections Academy was adequate, he submitted a "Voluntary Withdrawal of Applicant" form in August 2013 that removed him from further consideration for appointment as a Police Officer.

Additionally, the appointing authority states that the medical documentation Shultz provided in support of his appeal to Agency Services is dated June 28, 2013 to August 7, 2013 and does not confirm that he is now medically fit for an appointment as a Police Officer.¹ Further, the appointing authority emphasizes that Shultz's failure in the prior matter to disclose the injury at the time of his interview and unwillingness to undergo a medical and physical examination undermines his credibility in this matter and demonstrates his lack of candor and questionable judgment. Moreover, the appointing authority asserts that the appellant falsified questions 13 and 128 on the employment application.

Despite being provided the opportunity, Shultz did not provide a response or any additional documentation for the Commission review.

¹ The appointing authority notes that Shultz should have submitted the 2013 medical documentation in support of his prior appeal rather than in support of his claims in this matter.

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 the appointing authority's decision to remove the appellant's name from an eligible list was in error. *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 individual from an eligible 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:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows for the removal 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.

Initially, the appointing authority argues that, since Shultz's name was removed from the S9999M list in the previous matter, there is a sufficient basis to remove his name from the subject list in this matter on the basis of an unsatisfactory background report. The appointing authority explains, among other things, that as a result of Shultz's actions in the prior matter, including his lack of candor, failure to attend a medical and psychological evaluation as a condition of employment, and failure to complete pre-employment processing, such reasons constitute a sufficient basis for the removal in this matter. The Commission disagrees. A review of the record in this matter reveals that the facts of this case are substantially different from the circumstances presented in the prior matter and Shultz's name cannot now be removed based on the circumstances of the prior decision.

In the prior decision, Shultz signed a form on August 1, 2013 that withdrew his name from further consideration from the S9999M list for Police Officer, Hazlet Township. Further, Shultz informed the appointing authority at some point during the time of his 14-week training at Monmouth County Corrections that he had allegedly sustained an injury to his right shoulder and, as a result, would not be able to undergo and pass a medical and psychological evaluation. Although the appointing authority claims that his shoulder injury in 2013 is suspect since he was able to complete the Monmouth County Corrections Officer Academy at that time, the medical documentation provided by the appellant to Agency Services indicates that he initially sought treatment on June 28, 2013 due to pain in his right shoulder while attending that academy and was diagnosed with joint pain, lesions, impingement syndrome and treated with a lidocaine injection, anti-inflammatories, and physical therapy. However, when he followed up with his treating physician on July 23, 2013, approximately one week before his scheduled examinations with the appointing authority's physicians, he was diagnosed with subacromial bursitis with possible underlying rotator cuff tear and an MRI was ordered for additional

assessment. Thus, the medical documentation does not suggest that the appellant's injury at that time is suspect.

Although it appears that the claimed injury may have been a factor related to his decision to withdraw from the S9999M list, since Shultz withdrew from further consideration from that list, the Commission upheld his removal on the basis of his *inability, unavailability or refusal to accept the appointment*. See *N.J.A.C. 4A:4-4.7(a)3*. Indeed, in disposing of the certification issued from the S9999M eligible list, the appointing authority indicated that Schultz did not complete pre-employment processing because he contacted it on July 23, 2013 and advised it that he would not be appearing for the medical examination. It is noted that question #128 on the application for the subject examination asks "Have you ever been rejected for employment with any law enforcement agency, in New Jersey, or another other state? If answer is YES, please list the law enforcement agency involved, and the reason for rejection." In response to the question, the appellant indicated:

Yes. Hazlet Police Department, removed from list for failure to appear for scheduled medical and psychological exams.

Thus, the appellant's response clearly reflected the basis as to why he was removed from the list. Regardless, even if he previously withdrew his name from consideration for the Police Officer as a result of his claimed injury on July 23, 2013, this does not establish that he was untruthful during his interview on July 8, 2013 or when he was conditionally offered the position on July 15, 2013. Based on the medical documentation provided in this appeal, the appellant was clearly diagnosed with bursitis on July 23, 2013, the day he advised the appointing authority that he could not attend the pre-employment medical evaluation.

Therefore, with respect to the questions on the employment application, there is no evidence that Shultz made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process in this matter. Initially, the appointing authority did not provide the entire employment application for review and only made references to questions 13 and 128 on the application. A review of Shultz's answers to questions 13 and 128 does not evidence any intent to deceive the appointing authority or that it could not adequately conduct a background investigation based on the information that was provided. Shultz properly disclosed in response to the questions that he withdrew from consideration from the S9999M list and did not complete training as a Police Officer. As such, the Commission is satisfied that there is no "lack of candor" on his part regarding his answers on the employment application. The appointing authority has not shown legitimate reasons that Shultz's name should be removed from the list for substantially similar reasons as indicated in the prior matter. Based on the circumstances presented in this matter, the appointing authority has

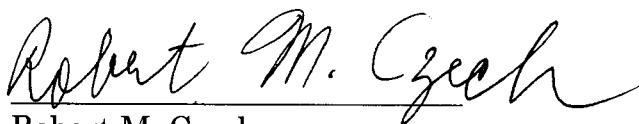
not met its burden of proof in support of its request to remove Shultz's name from the subject list. Accordingly, the Commission upholds Agency Services' determination restoring Shultz's name to the subject list for Police Officer (S9999R), Township of Hazlet for prospective employment opportunities only.

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

Nicholas F. Angiulo
Assistant Director
Division of Appeals
& Regulatory Affairs
Department of Personnel
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Gregory Shultz, Jr.
Ashley E. Malandre, Esq.
Evelyn A. Grandi
Kelly Glenn



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

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

September 28, 2015

Gregory Schultz

Title: Police Officer
Jurisdiction: Hazlet
Symbol: S9999R
Certification No: OL140645
Certification Date: 05/19/2014

Initial Determination: Removed – Unsatisfactory Background Report

This is in response to your letter, received by this office on October 31, 2014, regarding your appeal which removed your name from the above eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)9, which permits the removal of an eligible candidate's name from the eligible list for "Other sufficient reasons".

In support of its decision, the Appointing Authority provided a Civil Service Commission decision (Docket 2014-632) and related pages of your Background Report which determined that your removal for failing to complete the pre-employment process from the previous symbol (S9999M) was correct and proper.

You have provided a statement indicating that you believe that you should not be removed from the eligible list, because your background history has not changed; you were not removed from the previous symbol due to an unsatisfactory background, but for failing to complete the process.

After a thorough review of our records and all the relevant material submitted, we find that there is a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been reversed and the appeal is granted. Your name will be restored to S9999R. The eligible list is scheduled to expire May 1, 2016.

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

Evelyn A. Grandi
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