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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Justin Viola,
Sheriff's Officer (S9999R), Essex
County

List Removal Appeal

CSC Docket No. 2016-2841

ISSUED: **DEC 23 2016** (HS)

Justin Viola, represented by Nicholas J. Palma, Esq., appeals the removal of his name from the eligible list for Sheriff's Officer (S9999R), Essex County on the basis that he falsified his preemployment application.

The appellant, a non-veteran, took and passed the open competitive examination for Sheriff's 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, 2017.¹ The appellant's name was certified to the appointing authority on September 9, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to his falsification of his preemployment application. Specifically, the appointing authority asserted that in response to Question 25 on the application, "Have you ever been subjected to disciplinary action in connection with any employment?" the appellant responded in the negative. However, a background investigation revealed that the appellant was fired from a Chili's restaurant for cursing in the kitchen in May 2009 and was dismissed from the Monmouth County Police Academy on June 21, 2013 based on excessive violation of the academy's rules and regulations (325 demerits), lying (misrepresentation of the facts) and insubordination. In support, the appointing authority submitted the relevant sections of the appellant's preemployment application and the Monmouth County Police Academy's June 21, 2013 dismissal notice.

¹ 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 responds that he positively answered Question 24, "Were you ever discharged or asked to resign from employment?" Specifically, he disclosed the following: "2013 – Essex County Dept. of Corrections dismissed from Academy [and] later resigned in good standing" and "2009 – Chili's Rest fired for cursing in kitchen." The appellant explains that the "Academy" referred to in his answer to Question 24 was the Monmouth County Police Academy, where he was placed by the Essex County Department of Corrections, and he later resigned in good standing.² He states that in light of the disclosures he already made for Question 24, he understood Question 25 to inquire whether he was ever disciplined *other than* (appellant's emphasis) the discharges and/or resignations in good standing listed for Question 24, such as suspensions from employment. The appellant maintains that he did not falsify his application based on his answer to Question 24.

In response, the appointing authority reiterates that the appellant falsified his preemployment application by answering Question 25 in the negative.

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 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 name from an eligible list was in error.

In *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), in falsification cases, the court 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. In this matter, the appointing authority removed the appellant's name from the subject eligible list because he did not list, under Question 25 on the application, that he was fired from a Chili's restaurant for cursing in the kitchen in May 2009 and was dismissed from the Monmouth County Police Academy on June 21, 2013 based on excessive violation of the academy's rules and regulations, lying and insubordination. Nevertheless, a review of the record indicates that the appellant did provide, under Question 24 on the application, the information that should have been disclosed under Question 25. In this regard, while the appellant did not specify the underlying bases for his dismissal from the academy, he did

² The Monmouth County Police Academy's June 21, 2013 dismissal notice indicates that a copy was sent to the Essex County Department of Corrections, the "Trainee's [i.e., the appellant's] Agency." In addition, the County and Municipal Personnel System indicates that the appellant resigned in good standing from Essex County effective March 13, 2014.

disclose the fact of his dismissal by indicating "2013 – Essex County Dept. of Corrections dismissed from Academy [and] later resigned in good standing" under Question 24. He also disclosed his 2009 firing from a Chili's restaurant for cursing in the kitchen by indicating "2009 – Chili's Rest fired for cursing in kitchen" under Question 24. Based on the foregoing, the Commission finds that the appellant did not withhold information material to the position sought.

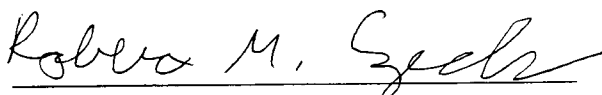
Nevertheless, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. It is not disputed that the appellant was dismissed from the Monmouth County Police Academy based on various infractions. This dismissal is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Sheriff's Officer. In this regard, it is recognized that a Sheriff's Officer is a law enforcement employee who must enforce and promote adherence to the law. Sheriff's 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 Sheriff's Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's dismissal from the Monmouth County Police Academy constitutes sufficient cause to remove his name from the eligible list for Sheriff's Officer (S9999R), Essex County 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 21ST DAY OF DECEMBER, 2016



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