



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Darvin Tapia,
Sheriff's Officer (S9999R), Hudson
County

CSC Docket No. 2017-2362

List Removal Appeal

ISSUED: October 12, 2017 (CSM)

Darvin Tapia appeals the removal of his name from the eligible list for Sheriff's Officer (S9999R), Hudson County, on the basis of his failure to meet the residency requirement.

The subject examination was announced with a September 4, 2013 closing date. It is noted that the subject list expired on March 22, 2017. In disposing of the May 19, 2016 certification, the appointing authority requested the removal of the appellant's name for failure to meet the residency requirement. In its request, the appointing authority indicated that the appellant did not list a Newark address on his application that was used when he was given a ticket for being an unlicensed driver on December 5, 2015. It also indicated that the appellant did not list any years of residence in the residence section of the application and that he listed on his Facebook account that he lives in Newark. Additionally, the appointing authority indicated that the appellant did not list two alias nicknames by which he has been known, "Darvin Tapia Rodriguez" and "Darvin Rodriguez," received two warning notices during his employment with Gateway Security for cellphone use at work and failure to call out of work four hours before sign in, failed to answer question #64 appropriately by not specifying date, offense, or disposition of a relative in his household who had been arrested. The appointing authority also indicated that the appellant failed to list a summons he received on November 4, 2014 for using a handheld cell while driving and one for driving without a license on December 5, 2015.

On appeal, the appellant states that he resides in Bayonne and provides copies of his driver's license, registration, proof of insurance, Selective Service registration, certified driver's abstract, and tax documents that indicate a Bayonne address. In a supplemental submission, the appellant indicates that he truly believed that he listed all of the summons he had received on his application and takes full responsibility for his failure to list them. With respect to his residency, the appellant explains that he was in an accident in December 2015 while using his father's car to go to work in Newark. In this regard, he states that a summons was issued to him but the address on the summons was to the vehicle's registered owner, his father, who lives in Newark. As such, he questions where the information was obtained that he indicated a Newark address when he was in this accident. The appellant provides copies of his father's driver's license, vehicle registration, and copy of the accident report in support of his appeal. Further, the appellant states that he never indicated on Facebook that he lived in Newark, as he did not want people on social media to know where he lived. Rather, he states that he indicated that he is "from Newark." With respect to his employment history, the appellant states that he was in fact recommended by a Gateway Assistant Manager for a security position with another employer. The appellant maintains that he is a college graduate, did not provide any verbal or written statements on his application that were false or deceptive, takes full responsibility for not listing his two tickets on his applications and maintains that his failure to list them is distinguishable from the facts in *In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991), as that matter involved domestic violence and temporary restraining orders, not two moving violations. The appellant also reiterates that he is a resident of Hudson County, and only listed on his Facebook account that he is "from Newark, New Jersey," *not* that he lived in Newark.

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 an appointing authority's decision to remove his or her 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 removal of 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:4-2.11(c)1 provides that when an appointing authority requires residency as of the date of the appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. *N.J.A.C.* 4A:4-4.7(a)7 provides that discontinuance of an eligible's residence in the

jurisdiction to which an examination was limited or for a title for which continuous residence is required is a cause for disqualification from an eligible list.

In the instant matter, the appointing authority properly removed the appellant's name from the subject list. The appellant concedes on appeal that he fully takes responsibility for his failure to list the summons he received on his application. However, he essentially argues that they are not material, as, unlike the situation in *Brown, supra*, they simply involved moving violations. The Civil Service Commission (Commission) disagrees. The information that the appellant failed to disclose is considered material and should have been accurately indicated on his employment application. 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.

In this case, the New Jersey Automated Traffic System General Inquiry (NJATSGI) obtained by the appointing authority during the course of its background investigation indicated that the appellant was issued a ticket for driving without a license on December 5, 2015. The NJATSGI listed the appellant's name, driver's license number, date of birth, and a Newark address. The NJATSGI for his November 4, 2014 ticket for use of a hand-held wireless telephone also listed a Newark address. Given that the appellant failed to list the tickets that were issued after the closing date of the subject examination on his application, which contained residency information contrary to what he indicated on his application, it was reasonable for the appointing authority to question if the appellant resided in Hudson or Essex County. In conjunction with his Facebook page indicating that he is "from Newark, New Jersey," failure to list the aliases "Darvin Tapia Rodriguez" and "Darvin Rodriguez" on his application that were discovered on his law enforcement and credit reports, the appellant's failure to disclose these tickets was material. Even assuming *arguendo* that the appellant is a resident of Hudson County, the information the appellant failed to include on his application suggested otherwise. At minimum, the appointing authority needed this information to have a complete understanding of his background, including any questions regarding his residency, in order to properly evaluate his candidacy. Thus, even though the situation underlying his motor vehicle violations are distinguishable from *Brown, supra*, the appellant, like all applicants, still must be held accountable for the accuracy of the information submitted and risks omitting or forgetting any information at his peril.

Additionally, it cannot be ignored that the driving tickets he failed to list on his application were issued in 2014 and the 2015 ticket was issued only six months

prior to his name being certified from the subject list in May 2016. It is noted that 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. In this regard, it is recognized that like municipal Police Officers, Sheriff's 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 Sheriff's Officers to present a personal background that exhibits respect for the law and rules. The appellant's failure to disclose this information called into question his residency and is indicative of the appellant's questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Sheriff's Officer. Therefore, based on the totality of the record in this case, the appointing authority has presented a sufficient basis to remove his name from the Sheriff's Officer (S9999R), Hudson County eligible list and the appellant has failed to meet his burden of proof in this matter

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 4TH DAY OF OCTOBER, 2017



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