B-4

STATE OF NEW JERSEY

In the Matter of Jessica DiBiasi, Correction Officer Recruit (S9988T), Department of Corrections	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
	:	List Removal Appeal
CSC Docket No. 2017-3114	:	

ISSUED: NOV 07 2017 (HS)

Jessica DiBiasi appeals the removal of her name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections, on the bases of an unsatisfactory criminal record and falsification of the preemployment application.

The appellant, a non-veteran, took and passed the open competitive examination for Correction Officer Recruit (S9988T), which had a closing date of January 8, 2015. The resulting eligible list promulgated on July 23, 2015 and expired on July 22, 2017. The appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record and falsification of her preemployment application. Specifically, the appointing authority asserted that the appellant was charged in 2009 with possession of less than 50 grams of marijuana in violation of *N.J.S.A.* 2C:35-10A(4), which was disposed through a Conditional Discharge, and was found guilty in 2011 and 2016 of disorderly conduct, an ordinance violation. The appointing authority also asserted that the appellant failed to disclose the previously noted Conditional Discharge. It further asserted that the appellant failed to disclose that she was charged in 2006 as a juvenile for improper behavior in violation of *N.J.S.A.* 2C:33-2A, harassment in violation of *N.J.S.A.* 2C:33-4A and defiant trespasser in violation of *N.J.S.A.* 2C:18-3B, all of which were dismissed.

On appeal to the Civil Service Commission (Commission), the appellant states that, with respect to the issue of falsification, she thought she had disclosed all charges. The appellant states that she went to the criminal division of her county courthouse. She asserts that a court employee she spoke with could not find

any of the charges that the appointing authority claims she failed to disclose, and her attorney could not find them either. With respect to her criminal record, the appellant states that the 2011 and 2016 incidents were instances of being at the wrong place at the wrong time. Regarding the 2011 incident, she states that her friend needed to be picked up from someone's house. The police were there due to a fight, and the appellant was arrested when she did not leave. The appellant states that she should never have gone to the house in the first place or should have left when told to. The appellant states that the 2016 incident involved a huge bar fight. While the appellant was trying to leave, the police arrived and arrested approximately 10 individuals. She asserts that all of the individuals arrested, including herself, had nothing to do with the fight. In court, the charge was reduced to an ordinance violation and she received a small fine. The appellant requests understanding that she made mistakes but that she has learned from the experiences. She also states that she has taken college courses.

In response, the appointing authority argues that its preemployment application requires the candidate to list all charges, regardless of whether the charges were dismissed by a judge or through a diversionary program. It maintains that the appellant's falsification of her preemployment application and her criminal record indicate that she is not a suitable candidate for the position at issue. In support, the appointing authority submits a copy of the appellant's preemployment application and documentation from the New Jersey Automated Complaint System (ACS) and the Family Automated Case Tracking System (FACTS). The documentation indicates that the appellant was charged in 2009 with possession of less than 50 grams of marijuana in violation of *N.J.S.A.* 2C:35-10A(4), which was disposed through a Conditional Discharge, and was found guilty in 2011 and 2016 of disorderly conduct, an ordinance violation.[1] The documentation further indicates that the appellant was charged in 2006 as a juvenile for improper behavior in violation of *N.J.S.A.* 2C:33-2A, harassment in violation of *N.J.S.A.* 2C:33-4A and defiant trespasser in violation of *N.J.S.A.* 2C:18-3B, all of which were dismissed.

It is noted that the appellant did not reply.

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 eligible list when 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.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which

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[1] It is noted that the appellant was an adult at the time she received these charges.

includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

a. Nature and seriousness of the crime;
b. Circumstances under which the crime occurred;
c. Date of the crime and age of the eligible when the crime was committed;
d. Whether the crime was an isolated event; and
e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. *See Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

Pursuant to *N.J.S.A.* 2C:36A-1, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. *See State v. Marzolf*, 79 *N.J.* 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's Conditional Discharge could still be properly considered in removing her name from the subject eligible list.

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. *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 her name from an eligible list was in error.

A review of the record indicates that the appointing authority's request to remove the appellant's name from the subject eligible list based on her falsification of the preemployment application was justified. In this regard, the appointing authority maintains that the appellant did not disclose that she was charged in 2009 with possession of less than 50 grams of marijuana in violation of *N.J.S.A.* 2C:35-10A(4), which was disposed through a Conditional Discharge. The appointing authority further maintains that she did not disclose that she was charged in 2006 as a juvenile for improper behavior in violation of *N.J.S.A.* 2C:33-2A, harassment in violation of *N.J.S.A.* 2C:33-4A and defiant trespasser in violation of *N.J.S.A.* 2C:18-3B, all of which were dismissed. In support, the appointing authority provides documentation from the ACS and FACTS indicating that information. The appellant provides no substantive evidence to dispute the documentation submitted by the appointing authority. Thus, it is clear that the appellant failed to disclose the information on her application. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correction Officer Recruit, to ensure that her employment application is a complete and accurate depiction of her 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 her 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 her name from the eligible list. The application required applicants to disclose all charges, even if dismissed. The type of omission presented is clearly 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 her application. The appellant's failure to disclose the information is indicative of her questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correction Officer Recruit.

In addition, the appointing authority's request to remove the appellant's name from the subject eligible list based on her criminal record was also justified. In this regard, the appellant received a Conditional Discharge in 2009 as already noted and was found guilty in 2011 and 2016 of disorderly conduct, an ordinance violation. The appellant was an adult at the time of these incidents, and the most

recent incident occurred during the life of the eligible list. While the appellant has no criminal convictions, her multiple negative interactions with law enforcement nonetheless relate adversely to the employment sought.

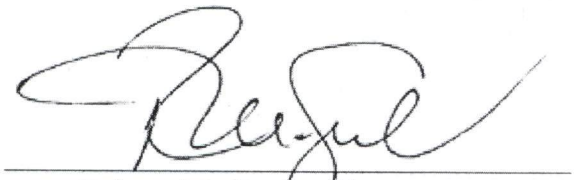
The Commission notes that a Correction Officer Recruit is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for 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. Accordingly, the appellant's falsification of her preemployment application and her unsatisfactory criminal record provide sufficient bases to remove the appellant's name from the subject 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 1ST DAY OF NOVEMBER, 2017



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