B5

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Alphonso Davis, Sheriff's Officer (S9999R), Union County Sheriff

List Removal Appeal

CSC Docket No. 2017-3200

ISSUED: NOV 17 2017 (HS)

Alphonso Davis, represented by Anthony J. Fusco, Jr., Esq., appeals the removal of his name from the eligible list for Sheriff's Officer (S9999R), Union County Sheriff on the basis that he falsified his preemployment application.

The appellant, a non-veteran,[1] 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 issued on May 1, 2014, promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified to the appointing authority on October 18, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to the falsification of his preemployment application. Specifically, the appointing authority asserted that in response to question 107, "Have you ever received a summons for a violation of the Motor Vehicle Laws in this or any other State?" the appellant failed to disclose that he received the following summonses: disregard of a stop sign on June 15, 2012; examination permit/learner's permit on June 15, 2012; failure to possess a driver's license on January 12, 2013; failure to observe a traffic control device (camera) on June 25, 2013 and August 26, 2014; failure to wear a seatbelt on August 13, 2014 and October 5, 2014; and failure to secure a child in a car seat on October 5, 2014. The appellant only disclosed that he was involved in an accident in June 2012 and received a summons for driving or parking an unregistered vehicle on September 18, 2016. The appellant pled guilty to and paid

---

1 Agency records indicate the appellant established veteran's preference in 2015.

fines for the June 15, 2012, January 12, 2013, June 25, 2013 and September 18, 2016 summonses. All other summonses were dismissed.

The appointing authority also asserted that with respect to question 109, "Has your Driver's License ever been suspended or revoked in this State or any other State?" the appellant did not indicate that his driver's license was suspended from January 3, 2015 to July 7, 2015. Rather, the question was left blank. It is noted that in response to question 19, "Has your [driver's] license ever been suspended or revoked?" the appellant answered "Yes" and explained as follows: "While deployed overseas, the person I left my car with got a ticket and didn't pay it." In support, the appointing authority submitted portions of the appellant's preemployment application; the appellant's certified driver abstract; and documentation from the New Jersey Automated Traffic System (ATS).

On appeal to the Civil Service Commission (Commission), the appellant admits that he pled guilty to and paid fines for the June 15, 2012, January 12, 2013, June 25, 2013 and September 18, 2016 summonses. However, he states that the 2014 summonses did not belong to him and could very well have belonged to his father, who has the same name and who was using the appellant's vehicle while the appellant was out of the State/country. In this regard, the appellant notes that he is a member of the New Jersey Army Reserves and was ordered to active duty for a period of 400 days as part of Operation Enduring Freedom. As a result, the appellant states that he was out of the country and/or State from July 16, 2014 through June 25, 2015. He states that it was not until July 1, 2015 that he learned that his driver's license was suspended for a failure to appear, and his license was restored on July 7, 2015. The appellant maintains that the appointing authority requested the removal of his name from the eligible list based on an allegation that he falsified his preemployment application,[2] not the amount of summonses received, and argues that the appointing authority has failed to prove its allegations. In support, the appellant submits a copy of his military orders, among other documents.

In response, the appointing authority, represented by Kathryn V. Hatfield, Esq., contends that the appellant knowingly and intentionally failed to answer question 109, which asked whether his driver's license was ever suspended or revoked. It also states that the appellant failed to identify all instances in which he received a summons for a violation of the motor vehicle laws. The appointing authority argues that there is no question that the appellant made a false statement of fact and that he intended to deceive it by omitting material facts, when he was required to present a complete and accurate record of his background for review. It asserts that the appellant does not deny the fact that he failed to accurately report the summonses he received or that he failed to indicate that his

---

[2] As noted earlier, the appellant listed the September 18, 2016 summons on his preemployment application but did not list the June 15, 2012, January 12, 2013 and June 25, 2013 summonses.

license had been suspended. The appointing authority maintains that the appellant's falsification reflects on his character and suitability for the position. In support, the appointing authority submits a complete copy of the appellant's preemployment application, among other documents.

In reply, the appellant argues that the appointing authority failed to reference the crucial information that he is a veteran and was deployed overseas at the time and dates when he failed to appear for traffic summonses, some of which were not his. He finds it upsetting that military personnel who serve during these times, especially overseas, are being accused of lying and/or falsification and that his character is being called into question regarding his qualifications for the position at issue.

In reply, the appointing authority contends that the appellant attempts to obfuscate the issues by claiming that his veteran status is relevant to his appeal when it is not. It maintains that the appellant knowingly and intentionally failed to reveal several additional motor vehicle infractions and failed to report that his driver's license had been suspended. The appointing authority argues that the fact that the appellant may have been deployed on active duty during the period when his license was suspended does not obviate his need to disclose this fact and be truthful. It proffers that had the appellant revealed the suspension and the facts surrounding it, those issues could have been taken into consideration.

In reply, the appellant states that he submitted his application to the best of his knowledge at the time and merely forgot specific incidents because he did not have a reference or documents to refer back to. The appellant states that he did not request, and the appointing authority did not provide him with, a full and current motor vehicle abstract of driver history. He states that he did not deliberately attempt to mislead the appointing authority. The appellant states that had he been able to review his motor vehicle history at the time he was completing his application, all of the correct information would have been provided. In support, the appellant submits a copy of his father's complete certified driver abstract.

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 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 this matter, the appointing authority maintains that the appellant failed to disclose several summonses for violations of the motor vehicle laws though the preemployment application specifically sought disclosure of such information at question 107. Among these summonses were the June 15, 2012, January 12, 2013 and June 25, 2013 summonses to which the appellant pled guilty and paid fines and for which the appellant does not dispute his responsibility. The appointing authority provides documentation from the ATS in support. Thus, it is clear that the appellant failed to disclose several summonses on his preemployment application. The appellant submits that certain of the summonses, namely those issued in 2014, were entered in his record due to his father's actions while the appellant was out of the State or country on active military duty. Assuming this was the case, the appellant still had an obligation to disclose those summonses, as they appear in his record; however, he could also have explained the surrounding circumstances for the appointing authority's consideration. While the appellant also argues that the appointing authority did not provide him with a full and current motor vehicle abstract of driver history, it must be emphasized that it is the responsibility of an applicant, particularly an applicant for a sensitive position such as a Sheriff's Officer, to ensure that his preemployment application is a complete and accurate depiction of his 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 his 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 of the summonses is sufficient cause to remove his name from the eligible list. The type of omission presented is 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. In this regard, motor vehicle infractions may reflect a disregard for the law, may be incompatible with the duties of a law enforcement officer and may justify the removal of a candidate from an eligible list for a law enforcement title. *See e.g., In the Matter of Pedro Rosado v. City of Newark,* Docket No. A-4129-01T1 (App. Div. June 6, 2003). Therefore, the summons-related information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his preemployment application. The appellant's failure to disclose the information is indicative of his questionable judgment. Such qualities are unacceptable for an

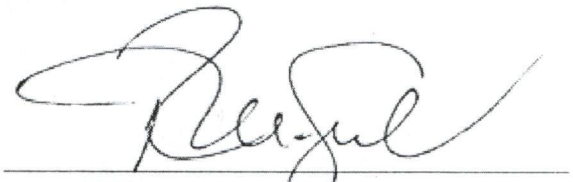
individual seeking a position as a Sheriff's Officer. In this regard, the Commission notes that a Sheriff's Officer is a law enforcement employee who must help keep order and promote adherence to the law. Sheriff's Officers, like municipal Police Officers, hold highly visible and sensitive positions 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, notwithstanding the appellant's veteran status, there is a sufficient basis to remove his name from the subject eligible list based on his omission of the summonses. As such, it is not necessary to address whether the appellant also falsified his preemployment application by failing to indicate his driver's license suspension at question 109.

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 15TH DAY OF NOVEMBER, 2017



Robert M. Czech, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c. Alphonso Davis
Anthony J. Fusco, Jr., Esq.
Joseph P. Cryan
Kathryn V. Hatfield, Esq.
Kelly Glenn