



STATE OF NEW JERSEY

In the Matter of Jose Rivera, Police
Officer (S9999R), Lakewood

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

CSC Docket No. 2017-2170

List Removal Appeal

ISSUED: July 18, 2017 (CSM)

Jose Rivera appeals the appointing authority’s request to remove his name from the eligible list for Police Officer (S9999R), Lakewood, on the basis of falsification of his employment application.

In disposing of the September 7, 2016 certification, the appointing authority requested the removal of the appellant’s name, contending that the appellant had falsified his employment application.¹ Specifically, the appointing authority presented that the appellant indicated that he only received three motor vehicle summons on his application. He received violations for improper window tint in October 2014 and March 2016 and one for speeding in May 2016. However, the appellant’s certified motor vehicle abstract also indicated that he received a summons for failure to wear a seat belt in March 2010. The appointing authority also indicated that the application requested candidates to provide copies of their federal and state income tax returns for the previous two years. When the appointing authority asked the appellant why a 2014 tax return was not included in his application, the appellant stated that he did not file one because he has been paid off the books at the job where he has been employed for the last five years.

On appeal, the appellant states that during his interview with the appointing authority, he explained that he did not file a 2014 tax return because he worked off the books but that he would attempt to file a 1099 for 2014. Unfortunately, the appellant states that he was unable to file a 1099 due to it being too late to submit all the paperwork. With respect to not indicating on his

¹ The Police Officer (S9999R), Lakewood eligible list expired on March 22, 2017.

application that he received a ticket he received in 2010, the appellant states that he was unaware that he needed to file for a certified abstract and that the DMV only had access to his five year abstract. In support of his appeal, the appellant provides a copy of his certified abstract from the DMV and requests that his name be restored to the list.

The appointing authority did not provide any additional information for the Commission to review in this matter.

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 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:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the removal of 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 his or her name from an eligible list was in error.

In the instant matter, the appointing authority removed the appellant's name from the subject list since he failed to disclose that he received a summons for failure to wear a seat belt in March 2010 and he did not file a federal or state tax return in 2014 because he was paid off the books. The appellant concedes in his appeal submission that he did not file federal and state taxes for 2014 because he works off the books. Although he asserts that he indicated to the appointing authority during the interview that he would attempt to file a 1099 for 2014, it cannot be ignored that the selection process occurred October 2016. Further, the appellant states in his appeal that he was unable to file a 1099 because it was too late. In other words, it appears that the appellant earned income that he has not reported to state and federal authorities for tax purposes. The appellant's disregard for tax law and income reporting requirements and are indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of duties of a Police Officer. When considering the situation regarding the appellant's failure to file tax returns in 2014, the information that the appellant failed to disclose regarding his driving record is considered material and should have been accurately indicated on her 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 regard, it is recognized that municipal Police 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 Police Officers to present a personal background that exhibits respect for the law and rules. The appellant's failure to disclose this information is also indicative of the appellant's questionable judgment. Accordingly, given the totality of the circumstances, the appointing authority has presented sufficient cause to remove the appellant's name from the Police Officer (S9999R) 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 13TH DAY OF JULY, 2017



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