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STATE OF NEW JERSEY

In the Matter of Eddie Acosta,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2392

List Removal Appeal

ISSUED: JUN 19 2015 (JET)

Eddie Acosta, represented by Erik C. Acosta, Esq., appeals the attached decision of the former Division of Classification and Personnel Management (CPM),¹ which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections, eligible list on the basis of an unsatisfactory employment record and falsification of his employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R),² achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 23, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory employment record and falsification of his employment application. Specifically, the background investigation revealed that the appellant was terminated from his position as an EMS Lieutenant with North Brunswick First Aid and Rescue Squad (FARS) in March 2013 for abandoning and walking out on his shift.³ Further, the appellant

¹ Now the Division of Agency Services.

² It is noted that the eligible list for Correction Officer Recruit (S9988R) initially expired on May 22, 2015 but was revived and extended until a new list is available. See *In the Matter of Correction Officer Recruit* (CSC, decided June 3, 2015).

³ It is noted that the June 16, 2014 employment verification form indicates that "[the appellant] walked off his shift and was terminated but we also received a resignation letter later." It also indicates that the appellant did not resign in good standing. By way of letter dated November 20, 2014, FARS' President Amy Cohen indicated that "a further review of [the appellant's] file revealed that he resigned from his position at [FARS]." Former Administrative Secretary Susan Soto also

failed to list that he was terminated from his position on the employment application. Rather, he indicated on the employment application that he left FARS due to scheduling conflicts. The appellant appealed the matter to CPM, which found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the June 16, 2014 employment verification form relied upon to remove his name from the eligible list is incorrect. The appellant explains that he submitted an amended employment verification form dated November 20, 2014 to CPM which confirms that he resigned from FARS due to a scheduling conflict and personal issues with another squad member. In this regard, he emphasizes that he verbally resigned from his position when a co-worker verbally attacked him and the Deputy Chief failed to intervene in the matter. Moreover, the appellant underscores that he provided FARS a letter of resignation which confirmed his verbal resignation. The appellant adds that the amended form is sufficient to show that he does not have an unsatisfactory employment background.⁴ Additionally, the appellant states that the amended employment verification is consistent with the information provided in the employment application. Therefore, he did not falsify the employment application.

In response, the appointing authority states that the appellant attended pre-employment processing and he provided an employment application dated May 15, 2014 which indicated that he left his position at FARS due to a scheduling conflict. However, a June 16 2014 employment verification revealed that the appellant "walked off his shift and was terminated."⁵ The appointing authority asserts that the appellant did not list on the employment application that he walked off his shift. The appointing authority adds that the appellant was terminated in March 2013 and he did not obtain the November 20, 2014 amended employment verification until after he was terminated from his position. The appointing authority explains that when candidates, like the appellant, fail to provide a complete history of their background information in the employment application, they deny the appointing authority the ability to make an informed determination during the appointment process. In the appellant's case, his failure to disclose that he was terminated from his position is sufficient to disqualify him from further consideration. Moreover, the subject position is a highly visible and sensitive position in law enforcement, and the appellant's background is sufficient to disqualify him from further consideration.

submits a letter dated September 29, 2014 which indicates that she was employed in the human resources unit. She confirms that the appellant resigned and did not walk out on his shift.

⁴ The appellant states that he resigned from FARS due to scheduling conflicts and personal issues.

⁵ It also indicated that a resignation letter was "later" received from the appellant.

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 individual from an eligible 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:4-6.3(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. Further, *N.J.A.C.* 4A:4-4.7(a)11 allows the removal of an eligible's name from an eligible list for other valid reasons.

In the instant matter, the removal of the appellant's name from the eligible list was not justified. The information submitted by the appellant on appeal confirms that he was not terminated. Although the June 14, 2014 employment verification form indicates "[the appellant] walked off his shift and was terminated," it also indicates that the employer received a letter of resignation from the appellant. Further, the appellant submits letters on appeal which confirm that he resigned, which the appointing authority does not dispute. Since the President of FARS confirms that the appellant resigned, this information is sufficient evidence to overcome the June 14, 2014 employment verification form. Therefore, the Commission does not find that the appellant's resignation from employment, in and of itself, is sufficient to remove his name from the eligible list due to an adverse employment history. With regard to the argument that the appellant failed to list on the employment application that he was terminated, the record does not reflect that the appellant attempted to conceal any information on the employment application. As noted above, the appellant was not terminated. The appellant clearly listed on the employment application that he resigned from FARS due to a scheduling conflict. It was not until the appellant was notified that his name was being removed from the list that he became aware of the discrepancy regarding his service with FARS. Upon discovering this issue, the appellant took timely action in order to provide the appointing authority with an accurate record of his background. Based on the circumstances presented in this matter, the Commission is satisfied that the appellant did not falsify the employment application. Therefore, the appointing authority has not demonstrated sufficient cause to remove his name from the subject eligible list. However, the appointing authority could use the appellant's verbal resignation without notice as a basis to bypass his name. As such, the appellant's name should be recorded as bypassed on the certification.

Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted, the appellant's name be recorded as bypassed, and that his name be certified at the time of the next certification for Correction Officer Recruit (S9988R) for prospective appointment opportunities only.

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 17th DAY OF JUNE, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries and Correspondence	Henry Maurer Director Division of Appeals & Regulatory Affairs Civil Service Commission Written Record Appeals Unit P.O. Box 312 Trenton, New Jersey 08625-0312
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Attachment

c: Eddie Acosta
Erik C. Acosta, Esq.
Jennifer Rodriguez
James Mulholland
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

January 15, 2015

Erik C. Acosta, Esq.

**Re: List Removal Appeal of Eddie Acosta
Correction Officer Recruit (S9988R)**

Dear Mr. Acosta, Esq.:

This is in response to your correspondence in behalf of your client, Eddie Acosta, appealing his removal from the Correction Officer Recruit list (S9988R) as a result of an unsatisfactory background report/unsatisfactory criminal record and falsification of information.

In your correspondence it is your claim that Mr. Acosta should be restored to the Correction Officer Recruit eligibility list (S9988R) since he resigned from the North Brunswick First Aid and Rescue Squad (NBFARS) and was not terminated as indicated on the Department of Corrections' Employment Contact form.

Per your argument, you indicated that Mr. Acosta and his partner were confronted by an NBFARS Officer who went into a profanity-laced tirade. Mr. Acosta implored the on-duty officer to intervene and when the on-duty officer did not, Mr. Acosta verbally resigned on the spot. The following day, a formal written resignation was submitted by Mr. Acosta.

In addition, you have submitted letters from the current President and former Administrative Secretary of NBFARS. NFBARS' President attests that Mr. Acosta's file revealed that he resigned from his position. The former Administrative Secretary of NBFARS asserts that when she was employed with NBFARS, Mr. Acosta submitted a letter of resignation due to scheduling conflicts.

On Mr. Acosta's letter of resignation, Mr. Acosta stated that he was "resigning as EMT due to scheduling issues and personal conflicts."

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Erik C. Acosta, Esq

The Department of Corrections (DOC) asserts that when employed as an "EMS Lieutenant" with NBFARS, Mr. Acosta walked off of his shift and was terminated in March of 2013. Afterwards, NBFARS received Mr. Acosta's letter of resignation. In addition, DOC indicates that Mr. Acosta stated that he left NBFARS because of schedule conflicts but according to the Employment Contact form, Mr. Acosta abandoned his shift and was terminated.

On the DOC's Application for Employment, Mr. Acosta noted his reason for leaving NBFARS was "Resigned-Schedule Conflicts". In your argument, you have indicated that Mr. Acosta resigned immediately after being scolded by a NBFARS officer. The former Administrative Secretary indicated that Mr. Acosta left of his own accord due to personal conflicts within the management staff. It was also noted by the former Administrative Secretary that "language used by the Chief and Rescue Captain when "remediating" an employee was vulgar and less than gentleman like."

Mr. Acosta's "verbal resignation" from NBFARS occurred immediately after he was verbally berated by an officer of the NBFARS, not as a result of "schedule conflicts" as indicated in his employment application.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore Mr. Acosta's name to the eligible list. Therefore, the Appointing Authority's request to remove Mr. Acosta's name has been sustained and his appeal is denied.

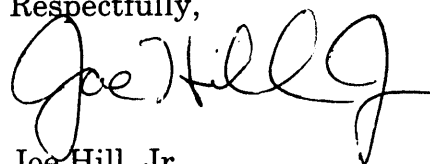
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (ARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to ARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

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Erik C. Acosta, Esq.

Please be advised that pursuant to P.L. 2010 c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Respectfully,



Joe Hill, Jr.
Assistant Director

c: James J. Mulholland,
Director of Human Resources

