



B-3

STATE OF NEW JERSEY

In the Matter of Fabricio Lopez,
Sheriff's Officer (S9999R), Hudson
County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-713

List Removal Appeal

ISSUED: **NOV 19 2015** (SLK)

Fabricio Lopez, represented by Donald B. Ross, Esq., appeals the determination of the Division of Agency Services (Agency Services) upholding the removal of his name from the eligible list for Sheriff's Officer (S9999R),¹ Hudson County, on the basis of falsification of his application.

In disposing of the May 21, 2014 certification, the appointing authority requested the removal of the appellant's name, contending that he falsified his employment application. Specifically, the appellant indicated that he had never been reprimanded or disciplined while in the military;² however, a check of his military records shows that in 2002 while in the United States Navy (Navy), the appellant was absent without leave (AWOL) for four days.

On appeal, Mr. Lopez presents that after the alleged incident in 2002, he received a Good Conduct Medal from the Navy in 2004. Mr. Lopez asserts that he could not have received a Good Conduct Medal if he had been disciplined for being AWOL. Additionally, he states that he received an honorable discharge from the Navy in 2006 which was free of any negative inferences and indicates that he was recommended for re-enlistment. The appellant certifies he was never charged or convicted of any military offense and maintains that he first learned in September 2014 after being contacted by a representative of the Civil Service Commission (Commission) that his Navy record alleges that he was AWOL for four days in 2002.

¹ The subject eligible list expires on May 1, 2016. There are currently no extensions.

² It is noted that Mr. Lopez does not have veterans preference status under N.J.A.C. 4A:5-1.1.

The appellant represents that in 2002 he was assigned to a unit in Virginia Beach, Virginia and his supervisor granted him permission to combine two earned leave days with his two regular weekend days off so he could have a four day weekend. Upon his return, the appellant explains that a non-commissioned officer senior to his supervisor asked him where he had been for the weekend and he advised that he had received permission to combine his regular weekend off days with two earned days off. Mr. Lopez claims that that officer responded, "OK, I understand, no problem—get back to work" or words to that effect. Consequently, the appellant asserts that he has no idea why his naval record indicates that he has an unauthorized absence. The appellant states that in September 2014 he applied to the Board for Correction of Naval Records (Navy Board) to have his record corrected and contacted it four or five times to have his matter expedited. However, the appellant has yet to receive a decision which is consistent with the Navy Board's process, as stated on its website, that it may take up to 18 months before it renders a decision.

Although provided the opportunity, the appointing authority did not submit any additional information or argument for the Commission to review.

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.

A thorough review of the record indicates that the appellant's removal from the (S9999R) eligible list for Sheriff's Officer is not warranted. In order to have committed falsification in the selection or appointment process, one would have to know or reasonably know the information he or she is falsifying. In this matter, the appellant completed his employment application on June 28, 2014 indicating that he was never reprimanded or disciplined for any infraction of military law or rule. Thereafter, Mr. Lopez stated under oath that he first learned in September 2014, when contacted by a representative from the Commission, that his naval record contains allegations that he was AWOL in September 2002. Further, there is not anything in the record to dispute the appellant's statement, as there is no evidence that he was served any charges, that there was any disciplinary proceeding, or that he was in any way reprimanded based on this alleged incident. In fact, the appellant's Certificate of Release or Discharge from Active Duty, United States Department of Defense Form 214 (DD214), indicates that he received an honorable discharge and does not reference any disciplinary action during his term of service.

Additionally, his DD214 shows that he received a Good Conduct Medal for the period ending May 23, 2004, which is also after the time of the alleged incident. Had the appellant received discipline for being AWOL, it is unlikely that he would have been awarded a Good Conduct Medal. Moreover, the appellant made a good faith effort to correct his naval record in a timely fashion as he applied to the Navy Board to correct his record immediately after he learned of the allegations. Further, the appointing authority has not rebutted the appellant's evidence or arguments in this matter.

Moreover, even if the appellant had been disciplined for being AWOL for four days in 2002 and he stated this on his application, this, in itself, would not constitute sufficient cause to remove his name from the subject eligible list. Here, the alleged incident took place nearly 12 years prior to his completing his application. Additionally, his record confirms that he was honorably discharged and received a Good Conduct Medal, which is further evidence that he was never served charges, had any disciplinary proceedings, nor was in any way reprimanded for any infraction of military law and rules. 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 Sheriff's Officer (S9999R), Hudson County.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name restored to the list for Sheriff's Officer (S9999R), Hudson County, for prospective employment 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 18th DAY OF NOVEMBER, 2015



Richard Williams
Member
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

Attachment

c: Fabricio Lopez
Donald B. Ross, Jr., Esq.
Frank X. Schillari
Joe Hill



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

July 16, 2015

Fabricio Lopez

Title: Sheriffs Officer
Jurisdiction: Hudson County
Symbol: S9999R
Certification No: OL140666
Certification Date: 05/21/2014

Initial Determination: Removed – Falsification of Application

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)6, which permits the removal of an eligible candidate's name from the eligible list if the eligible "Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process."

In support of its decision, the Appointing Authority provided a Background Investigation Report which included a copy of your Military Discipline Record. Based on this information, the Appointing Authority states that you were disciplined for an unauthorized absence in October 2002 while serving in the United States Navy which you failed to include when completing your application.

In your letter, you indicate that you were never disciplined in any form or by any review board. Furthermore, you state that you would not have received an Honorable Discharge and remain eligible for Re-Enlistment if your military record was not spotless. You have written to the Board for Correction of Naval Records for clarification, however, you have not followed up with this Commission to supplement your appeal.

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

In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of 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 DARA. You must

put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

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 (C44:10-55 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 Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Elliott Cohen
Human Resource Consultant
Local Placement Services

Frank X. Schillari
Hudson County Sheriff
595 Newark Avenue
Jersey City, NJ 07306