STATE OF NEW JERSEY

In the Matter of Scott DeCarlo, Fire Fighter (M1559T), Nutley	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2017-2061	List Removal Appeal

ISSUED: October 19, 2017 (CSM)

Scott DeCarlo, represented by Brian J. Aloia, Esq., appeals the appointing authority's request to remove his name from the eligible list for Fire Fighter (M1559T), Nutley, on the basis of falsification of his employment application.

In disposing of the May 4, 2016 certification, the appointing authority requested the removal of the appellant's name, a veteran, contending that he falsified his employment application. Specifically, the appointing authority presented that appellant initially filed an incomplete application and detailed the 40 different areas where he either failed to answer a question, provided an incomplete answer, or did not return required documentation in order to conduct a background investigation, such an information waiver form to send to police department record bureaus. Since his application was incomplete, the appellant was given a second application and told to complete it more fully. However, rather than type his answers to the questions on the second application on the form provided, the appellant re-typed the questions from the application given to him by the appointing authority as well as his answers and handed it in. As this was determined to be unacceptable, the appellant was given a third application and advised that he could either type or handwrite his responses, but that he must use the application he was provided. The appellant returned this application filled out by hand. As there were numerous contradictory and inconsistent responses to the same questions on each application, the appointing authority removed his name from the subject list.

On appeal, the appellant states that he did not falsify his application and his name should not be removed from the list. Further, he asserts that because he is a veteran, he should have been appointed from the list.

In response, the appointing authority, represented by Christina M. Abreu, Esq., states that the appellant failed to supply consistent and/or complete information in each of the three attempts he was provided to complete the application. For example, on page 22 of this third application, the appellant states that his reason for leaving the Army is to "return to civilian life." However, he failed to answer this question on his first application and the appellant's DD-214 indicates that the reason he was separated from the Army was for "Alcohol Rehabilitation Failure." In response to the question if he had ever been warned by an employer about alcohol or drugs impacting his job performance, the appellant answered "yes" on his first application, but failed to explain as requested. On his second and third applications, he answered "no." The appointing authority argues that since the appellant was discharged in 2014 for alcohol rehabilitation failure, his answer should have been "yes." Further, the appellant indicated on his first application that law enforcement had been called to his house and that he had been summoned, subpoenaed or requested to testify in court, but answered "no" to this question on his second and third applications. He also answered "no" on all of his applications to the question that asked had he ever been stopped, questioned, or held as a suspicious person or investigated by any law enforcement agency. However, the appointing authority's background investigation found that he failed to disclose a charge of discharging a firearm in 2013 that was dismissed. In this regard, the appointing authority also indicated that the appellant denied ever committing a weapons violation in response to a question on page 28. Additionally, the appointing authority asserted that the appellant indicated that he was charged and pled guilty to simple assault and reckless driving as a juvenile, but its investigation found that he was charged with operating a motor vehicle as a minor while under the influence of alcohol. It also states that the appellant answered "no" to the question that asked if he had ever been questioned, arrested or charged for committing alcohol related offenses. However, the appellant was charged with DWI at Joint Base Lewis-McCord as well as the undisclosed incident as a minor in April 2002.

In reply, the appellant states that he never intended to defraud the appointing authority or falsify the 50-page application. Rather, he claims that the questions do not offer any guidance as to whether he should have answered the question posed as a civilian or as a veteran or as an adult or juvenile. He states, that "at one point or another in least one of his three applications [he] was truthful about all of the inquiries." For example, the appellant emphasizes that he was honorably discharged and it is not accurate to say there was any alcohol rehabilitation to fail because he was never ordered to attend alcohol rehabilitation. In this regard, his Sergeant Major in the Army knew he wanted to return to civilian

life so he gave the appellant an "out" by writing "rehabilitation failure" as a reason for separation from the military. He goes on to explain,"had the Sergeant Major not written this, [the appellant] would have had to complete an additional six months of service before being able to resume civilian life." The appellant presents that he was confused about the term "subpoenaed" to the question on page 27 so he changed his response. Further, he maintains that his "conversation" with police officers regarding the firearms incident cannot be categorized as an arrest. Additionally, he states that the characterization by the appointing authority of a "DWI at Joint Base Lewis McCord" is inaccurate as the prosecutor declined to prosecute that incident and he reiterates that he did reference the motor vehicle incident in Clifton when he admitted pleading to reckless driving. Moreover, the appellant states that after he was advised to "really think" about his answers, he revised his responses on several questions from "yes" to "no," such as the one asking if law enforcement had ever been called to his home. In that matter, he explains that he revised his answer to "no" because the incident occurred when he was a minor and since no further action was taken, did not need to be discussed.

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:4-6.3(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 properly removed the appellant's name from the subject list. Initially, the instructions on the application clearly advise all candidates that they are required to answer all questions fully by providing specific details, to leave no blank spaces, and that failure to properly and completely fill out the application shall constitute an immediate removal of his or her name from the list. On his first application, the appellant did not fill in the area on page 22 that requested the name of his previous employer and the reason why he left employment. On his second application, he filled in the area on page 22, but did not specify his reason for leave. On his third application, he explained the reason that he left the army was because "I wanted to return to civilian life." Although the appellant's DD-214 indicates that he was honorably discharged, it clearly indicates in the narrative that the reason for his separation was alcohol rehabilitation failure. The Civil Service Commission (Commission) is troubled by the appellant's explanation that his Sergeant Major knew he wanted to return to civilian life so he gave him an "out" by writing "rehabilitation failure" as a reason for separation and "had the Sergeant Major not written this" he would have had to complete an additional six months of service before being able to resume civilian

life. Based on this explanation, the appellant is suggesting that he is aware that the reason recorded on his DD-214 for his separation from the military is not accurate and he was complicate to this inaccuracy in order to be discharged six months earlier than his term of enlistment.

As noted by the appointing authority, the appellant's applications contain multiple inconsistencies that call into question their accuracy. For example, question #6 on page 26 asked the applicants if a law enforcement agency ever been called, or responded to any home, residence, room in which you resided, occupied or on you at any location for any reason. The appellant answered "yes" on his first application, but "no" on his second and third applications. Notwithstanding the appellant's argument that the appointing authority advising him to "really think" about his answers justified revising his responses on the second and third applications, this question did not exclude juvenile incidents as it clearly asked if law enforcement was called to any home the appellant occupied and for any reason. Similarly, question #14 on page 27 asked applicants if they had ever been stopped, questioned or held as a suspicious person or investigated by any law enforcement agency or private or corporate security for any reason. The appellant answered "yes" on his first application but changed it to "no" on his second and third applications. However, the appellant failed to indicate on any of his applications that he was charged with discharging a firearm in 2013 and driving under the influence and open container in 2010 while serving at Joint Base Lewis-McCord. Although the appellant argues that it is unfair to characterize the 2013 incident as an "arrest," the question asked if had ever been stopped or questioned by a law enforcement agency. The appellant was clearly questioned by the police during these incidents that he failed to even disclose ever occurred on his application.

The appellant's selective descriptions of his adverse encounters with law enforcement, driving record and general background as justification for changing his responses on his three applications, as well as his failure to disclose information, such as being charged with discharging a firearm and DWI at Joint Base Lewis-McCord, is considered material and should have been accurately indicated on his 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 case, it is recognized that a firefighter occupies a highly visible and sensitive position within the community and the standard for an applicant includes a good character and utmost confidence and trust. *See N.J.S.A.* 40A:14-9 which provides, in pertinent part, that except as otherwise provided by law, no person shall be appointed as a member of the paid or as a paid member of a part-paid fire department and force unless he is of good moral character. The appellant's

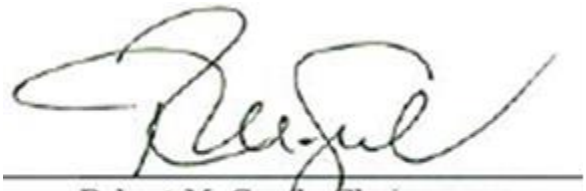
failure to and/or selectively information is indicative of the appellant's lack of integrity and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Fire Fighter. Accordingly, given the totality of the circumstances, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M1559T) 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 18TH DAY OF OCTOBER, 2017



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