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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Damian Albanese,
Correction Officer Recruit (S9988T),
Department of Corrections

List Removal Appeal

CSC Docket No. 2016-4396

ISSUED: MAR 09 2017 (HS)

Damian Albanese appeals his rejection as a Correction Officer Recruit candidate by the Department of Corrections and its request to remove his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections on the basis of a positive drug test.

The appointing authority rejected the appellant, a Correction Officer Recruit candidate, due to a positive drug test. In support of its rejection and request for removal, the appointing authority submitted a laboratory report stating that a sample of the appellant's urine taken on April 11, 2016 was initially screened for oxycodone using the immunoassay method. The laboratory report further indicated that the sample was retested using the mass spectrometry method, which confirmed a positive test for total oxymorphone, and that total oxymorphone was not listed on a medication sheet. Specifically, the report noted that a medication sheet was not provided.

On appeal to the Civil Service Commission (Commission), the appellant states that he has never consumed nor been prescribed total oxymorphone and that he only takes prescribed medications, including Percocet (generically oxycodone-acetaminophen). He also states his understanding that testing can show other concentrates and metabolites. In this regard, the appellant states that total oxymorphone is a metabolite of oxycodone, which he is prescribed. Thus, it is plausible and logical that his drug test could prove positive for total oxymorphone even though he has never consumed that specific drug. The appellant requests a hearing and the removal of his name from the Central Drug Registry.

In response, the appointing authority notes that total oxymorphone is a Schedule II narcotic drug under the federal Controlled Substances Act. It notes that when candidates are scheduled for Phase 1 and 2 processing, they are instructed to bring a list of all prescription and non-prescription medications taken in the last 30 days. At Phase 1 and 2 processing, candidates are provided with a form to list their medications, which is sent with the candidate's urine sample to the New Jersey State Toxicology Laboratory. The appointing authority reiterates that the laboratory report indicates that the appellant did not list total oxymorphone on a medication sheet. It maintains that if the appellant was prescribed this medication, he should have listed it on his medication sheet.

In addition, the appointing authority notes that it later requested verification from the appellant that he had a prescription for total oxymorphone at the time he reported for Phase 1 and 2 processing on April 11, 2016 or within 30 days immediately preceding that date. The appellant responded with pharmacy prescription records indicating that prescriptions for oxycodone-acetaminophen were filled on June 1, 2015 and April 10, 2013 respectively and a prescription for morphine sulfate was filled on April 10, 2013. On his cover letter, the appellant indicated: "The prescription for the MS Contin [morphine sulfate] is/was old; I had a few left in my medicine cabinet. I used to use them for long term pain relief for my knee. I still use the Percocet [oxycodone-acetaminophen] for breakaway pain when and if needed. Taking them both together, according to my doctor, can and would show a positive for oxymorphone." The appointing authority highlights that the June 1, 2015 and April 10, 2013 oxycodone-acetaminophen prescriptions were well outside 30 days immediately preceding the appellant's April 11, 2016 Phase 1 and 2 processing appointment.

CONCLUSION

The appellant requests a hearing in this matter. List removal appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b.* Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d).* For the reasons explained below, no material issue of disputed fact has been presented that would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978).*

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)3*, states that an eligible who is physically unfit to effectively perform the duties of the position may be removed from the eligible list. *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, also states that an eligible may be removed from an eligible list for other sufficient reasons as determined by the Commission.

The record in this matter indicates that the appellant had a positive drug test for total oxymorphone, which was not listed on his medication sheet. No substantive evidence has been presented to dispute this information. The appellant maintains that the positive result may be explained by his prescription for oxycodone-acetaminophen and because oxycodone metabolizes to oxymorphone. However, in response to the appointing authority's request for verification that he had a prescription for total oxymorphone at the time he reported for Phase 1 and 2 processing on April 11, 2016 or within 30 days immediately preceding that date, the appellant provided pharmacy prescription records indicating that prescriptions for oxycodone-acetaminophen were filled on June 1, 2015 and April 10, 2013 respectively and a prescription for morphine sulfate was filled on April 10, 2013. These prescriptions were filled well before the 30 days immediately preceding April 11, 2016. Thus, even if the appellant was taking prescription oxycodone-acetaminophen that caused the positive drug test, the appellant's failure to provide up-to-date verifying documentation undermined the appointing authority's ability to conduct an effective and valid drug test. Such a failure to cooperate with the employment process, by itself, constitutes other sufficient cause for removal from a list for Correction Officer Recruit. *See e.g., In the Matter of Melissa Puryear-McDuffie* (MSB, decided November 8, 2007).

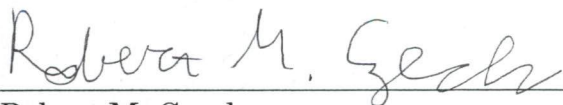
Finally, with regard to the appellant's request that his name be removed from the Central Drug Registry, it is noted that the Commission does not have jurisdiction over the addition or removal of names from the Registry.

ORDER

Therefore, it is ordered that this appeal be denied and the name of Damian Albanese be removed from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections.

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 9TH DAY OF MARCH, 2017



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