

STATE OF NEW JERSEY

In the Matter of Jorge Ortiz, Fire
Fighter (M1513T), Clifton

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-1890

List Removal Appeal

ISSUED: **SEP 22 2017** (SLK)

Jorge Ortiz, appeals his removal from the eligible list for Fire Fighter (M1513T), Clifton, on the basis of falsification of his pre-employment application.¹

By way of background, the appellant's name appeared on certification OL160470 that was issued to the appointing authority on April 18, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he falsified his application. Specifically, he did not disclose a Florida arrest.

On appeal, the appellant states that he has never been convicted of any charges except a shoplifting charge in 2002 while he was a teenager in high school. He presents that his New Jersey arrest records were expunged on June 15, 2016. The appellant indicates that he has not been able to expunge his record that involves an incident that took place in Florida. He emphasizes that the Florida charges were dismissed and are eligible for expungement. The appellant asserts that he has an arrest record because his fiancée, during her two pregnancies with their children, could not stand him. He indicates that the charges from the first incident were dropped and he was not arrested during the second incident. The appellant highlights his eight years of military service. The appellant presents that he currently is working for Essex County as a Family Service Worker.

¹ The original reason for the appellant's removal was an unsatisfactory criminal record. However, in the appointing authority's response to the appellant's appeal, which was copied to the appellant, it indicated that it wished to change the reason for his removal from an unsatisfactory criminal record to falsification of application.

In response, the appointing authority, represented by Matthew T. Priore, Esq., presents that on the appellant's application, he was asked several questions regarding whether he had any criminal record, had been involved in any domestic violence incidents, and had been investigated by a law enforcement agency and the appellant responded, "No." However, the appellant acknowledged that he had arrests in New Jersey that were expunged and an arrest record in Florida that has not been expunged. It states that the arrest in Florida resulted in the disposition, "unsatisfactory evidence to prove the charge." Therefore, while the appellant does not have any adult convictions other than offenses in New Jersey that he acknowledges have been expunged; he clearly failed to disclose his arrest record from Florida on his application. The appointing authority further indicates that the appellant failed to return his 2013 and 2015 tax returns and his high school transcript as requested. It emphasizes that the appellant does not dispute that he did not disclose his Florida arrest on his application.

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 Civil Service Commission to remove 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 this matter, the information that the appellant failed to disclose 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. The issue is not whether the appellant's criminal records is sufficient for removal. Instead, the issue is the appellant's failure to originally disclose his complete criminal record regarding his arrests, domestic violence incidents, and investigations by law enforcement calls into question his honesty and integrity, traits critical for the position as a Fire Fighter. See *In the Matter of Jorge Miranda* (CSC, decided March 9, 2017). Firefighters are not only entrusted with the duty to fight fire; they must also be able to work with the general public and other municipal employees, especially police officers, because the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship places at risk the citizens of

the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police departments at a fire. *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998). Further, expunged records may be considered when evaluating an applicant for a position as a Fire Fighter. Therefore, the mere fact that some of the appellant's record has been expunged or may be eligible to be expunged did not relieve him from the responsibility of disclosing his entire record to the appointing authority so that it could have a complete background while making a decision regarding his candidacy.

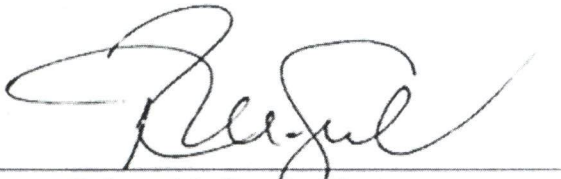
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Fire Fighter (M1513T) eligible list.

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 20th DAY OF SEPTEMBER, 2017



Robert M. Czech, Chairperson
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