



STATE OF NEW JERSEY

In the Matter of Marc Caldwell,
Police Officer (S9999U), Long Branch

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-3044

List Removal Appeal

ISSUED: DECEMBER 21, 2018 (SLK)

Marc Caldwell appeals his removal from the eligible list for Police Officer (S9999U), Long Branch, on the basis of falsification of his pre-employment application.

By way of background, the appellant’s name appeared on certification OL171394 that was issued to the appointing authority on November 29, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant’s name, contending that he falsified his application.

Specifically, the appointing authority’s background report indicates that the appellant had two possible residences, one in Long Branch and one in Ocean Township. However, the appellant did not list the Ocean Township address on his application. Further, its investigation revealed that the appellant’s car was spotted at the Ocean Township location on several occasions, but was never found to be located at the Long Branch address. Additionally, an in-home visit to the Ocean Township address indicated its use consistent with the appellant living there daily, while the Long Branch inspection indicated that this residence was not currently being used. Moreover, the appellant acknowledged to the investigator that he lied about sleeping at the Long Branch address on a specific day and stated that he had not stayed there in “like a month.” Further, the appellant acknowledged that the lease and other bills for the Ocean Township address were in his name and he stated that this was to help his fiancée. Additionally, the investigation revealed that the appellant was removed from the 39th Class of the Monmouth County Police Academy

Special Law Enforcement Officer Class (SLEO) II (Academy) as he received 235 demerits for cursing at his squad leader, not shaving, talking back and insubordination, but the appellant did not disclose this. Additionally, although the appellant indicated that he attended the Academy in May 2012 and from September 2013 to December 2013 and received SLEO I and II certifications, he did not disclose that he attended the Academy from January 2013 to May 2013 and failed to complete the SLEO II program at that time due to disciplinary reasons.

On appeal, the appellant presents that the appointing authority's investigators visited his fiancée's Ocean Township apartment that was leased under his name. He explains that he signed the lease because his fiancée did not have good credit, and this allowed her to move there. Thereafter, the investigators visited his residence in Long Branch and he asserts that, contrary to the appointing authority's statements, the investigation of his room clearly showed that it was his primary residence. He indicates that he explained to the investigators that his television was not working because he used his I-pad and laptop to watch television to keep the cable bill low. The appellant presents that one of the investigators stated that it did not look like he stayed there daily as there was dust inside his closet and then asked him when was the last time he stayed there. The appellant responded that he did not remember as he had been staying with his fiancée the past week or so due to the Thanksgiving holiday and they also spent some time away in Atlantic City. He indicates that the investigator continued to question him, and he became nervous because the investigation could end his life long dream of being a Police Officer. Therefore, he replied that he did not remember, maybe two weeks ago. The appellant claims that the investigator accused him of lying because they had been watching his car for the past month and had never seen it there. The appellant then responded that he was not completely sure and that maybe it was three weeks ago since his homeless cousin had been staying there with her kids. He states that the appointing authority initially asked him to indicate that he was no longer interested in the position; however, he refused. Thereafter, the appointing authority contacted him and said that it changed its mind, and after completing a physical test, he was invited for an oral interview. The appellant claims that when he showed up for the interview, a Lieutenant immediately said that he did not know why he was there because he was not going to be hired, angrily threw a pencil at him during the interview and never allowed him to explain why he had two addresses. Instead, every person on the interview panel called him a liar.

The appellant reiterates that he did not list the Ocean Township address as his residence because he never resided there, and he stayed there on the days that he did not work and other days when he wanted to be alone with his fiancée while they were planning a wedding. He notes that although he did not indicate that he resided at the Ocean Township address, as part of his application, he did indicate that he paid for electrical service for that address. The appellant argues that this shows that he was honest and disclosed the information concerning this address. He submits his

driver's license, registration, insurance card, employment stubs, gas bill, bank statements and voter registration card to prove that Long Branch was his primary residence. The appellant indicates that he recently purchased a home in Long Branch with his wife.

The appellant acknowledges that in 2013 he was removed from the Academy for insubordination. He presents that the application did not ask him if he had ever been removed from a police academy, which is why he did not include this incident. However, he represents that he fully explained the incident when meeting with the interview panel.

The appellant asserts that the he was not removed from the list due to his residence. Instead, he indicates that his name was ranked higher on the certification than several Long Branch Special Police Officers and City Dispatchers who the appointing authority wanted to hire and believes that is why it removed his name from the list.

In response, the appointing authority submits its background report and relies on it to support its position that the appellant's name should be removed from the list.

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 (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 appointing authority had valid reasons to remove the appellant's name from the list. A review of the appointing authority's background report indicates that the appellant did not accurately disclose to the investigator the last time that he slept at the Long Branch address. In this regard, on appeal, the appellant acknowledges that he initially told the investigator it had been a week since he last slept at the Long Branch address, then he changed his response to about two weeks after further questioning and then he changed his response a third time to say it had been around three weeks. While the appellant explains that he kept changing his response because he was nervous and did not want to jeopardize his candidacy, this is not a valid reason for not providing an accurate answer the first time he was questioned. Further, although the appellant claims that he never resided at the Ocean Township address and he disclosed this address by providing an electric bill

that was in his name for this address, given that the Ocean Township address lease and other bills were in his name, the appellant should have known that the appointing authority would have needed to fully understand the appellant's situation concerning this address on his application. Similarly, although the appellant claims that he did not disclose the time he had been removed from the Academy because he was not specifically asked that question on his application, the appellant should have known that the appointing authority would have wanted to know that he had been removed from the Academy and the full details concerning his removal. Regardless, the application clearly asked the appellant to list all the schools that he attended, and the appellant failed to disclose the time he attended the Academy when he was removed for disciplinary reasons.

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. Therefore, even if there was no intent to deceive, the Commission finds that the appellant did falsify his application because, at minimum, he needed to fully disclose his situation with the Ocean Township address and his removal from the Academy so that the appointing authority would have complete information when it made its decision regarding his candidacy. *In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a municipal Police Office is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990).

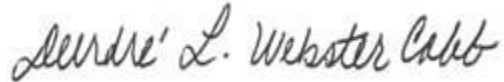
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999U), Long Branch eligible list.

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 19th DAY OF DECEMBER, 2018



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