



STATE OF NEW JERSEY

In the Matter of Juan Colon, Sheriff's
Officer (S9999U), Camden County
Sheriff's Office

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

CSC Docket No. 2019-600

List Removal Appeal

ISSUED: DECEMBER 21, 2018 (SLK)

Juan Colon appeals his removal from the eligible list for Sheriff's Officer (S9999U), Camden County on the basis that he falsified his application.

The appellant took the open competitive examination for Sheriff's Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant falsified his application.

On appeal, the appellant states that he served in the Army for over 20 years and follows one of its most important values, integrity. Therefore, he believes his removal is a misunderstanding.

In response, the appointing authority states that the appellant represented that he never received any court papers. However, the appellant indicated in his application that he appeared in bankruptcy court. Additionally, the appellant admitted that he had been charged with possession of alcohol under legal age and possession of a controlled dangerous substance (possession) and engaging in prostitution. Therefore, the appointing authority asserts that the appellant must have received court paperwork for these legal proceedings.¹ Further, the appointing

¹ The background report submitted to Agency Services indicates that the appellant's bankruptcy was in 2003 and the possession and engaging in prostitution charges were expunged. The information that

authority states that the appellant indicated that he had never been present when illegal drugs were used. However, the appointing authority states that the appellant admitted that he experimented with marijuana. Therefore, the appointing authority argues that the appellant must have been present during the use of illegal drugs. Moreover, it notes that the appellant failed to check the box next to “Alcohol Violation” and “Drug Possession” on the application. Additionally, the appointing authority’s response says, “[p]age 34, question o. The applicant checked “NO”. The applicant was question by police as a suspect during an investigation prior to his arrest for **Engaging in Prostitution** as described on page 31” and “[p]age 43, question 2. Applicant penned “DNA” and “[t]he Applicant is currently a Corrections Officer for Camden County and would have made application for the position.” It is noted that the appointing authority did not submit the parts of the appellant’s application that included these questions. Finally, the appointing authority indicates that the appellant misspelled “Sheriff” four times on his application essay.

Although given the opportunity, the appellant did not submit a reply.

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible’s name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission (Commission) or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate’s removal from a Police Officer eligible list to consider whether the candidate’s arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. *See Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

the appointing authority submitted in response to the appeal indicates that the possession charges were in 1997 and the engaging in prostitution charge was in 1999.

In *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement. See *N.J.S.A. 2C:52-3* and *N.J.S.A. 2C:52-8*.

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 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.

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 the instant matter, although the appointing authority claims that the appellant falsified his application by not supplying court paperwork for various legal proceedings and by not indicating everywhere on his application when asked about possession or being in the presence of illegal drugs, the Commission notes that the appellant did disclose these legal proceedings and his use of illegal drugs on his application. Further, with respect to the appellant's bankruptcy, this was not a recent event and, a candidate's negative credit history, in and of itself, is not a sufficient basis upon which to remove that candidate's name from an eligible list. See *In the Matter of Alana Farrow* (MSB decided October 1, 2003); *In the Matter of Danielle Bonassisa* (MSB, decided August 12, 2003); *In the Matter of Christopher Starkey* (MSB, decided July 17, 2002). Additionally, the possession charges were not recent, occurred while he was a minor and were expunged. Similarly, the engaging with a prostitute offense was not recent and was expunged. Therefore, the Commission finds that he did disclose all the material facts related to these proceedings and incidents. See *In the Matter of Lance Williams* (CSC, decided May 7, 2014). Further, concerning certain questions that the appointing authority references as indicated by the quotes above in its response, the Commission finds that the appointing authority has not sufficiently described the alleged falsification by the appellant nor has it provided sufficient documentation to support its claim for removal for these questions. Finally, misspelling the word "Sheriff" is not grounds for removal. However, as the appellant has the burden of proof in this matter and

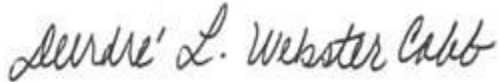
has not responded, the Commission finds the appellant's background does provide a basis for which the appointing authority can bypass him on certification OL171163.

ORDER

Therefore, it is ordered that Juan Colon's appeal be granted but his name on certification OL171163 be recorded as bypassed.

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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