



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Michael Woods, Fire
Fighter (M1544T), Jersey City

Request for Reconsideration

CSC Docket No. 2019-624

ISSUED: DECEMBER 21, 2018 (HS)

Michael Woods, represented by Michael L. Prigoff, Esq., requests reconsideration of the attached final decision rendered on August 1, 2018, which upheld the removal of the petitioner’s name from the eligible list for Fire Fighter (M1544T), Jersey City on the basis that he falsified his preemployment application. A copy of that decision is attached hereto and incorporated herein.

By way of background, the appointing authority requested the removal of the petitioner’s name from the subject eligible list on the basis that he falsified his preemployment application. Specifically, the appointing authority asserted that the petitioner omitted a South Carolina address he used in connection with his employment with the City of Goose Creek (Goose Creek) Fire Department from March 2016 to August 2016. The petitioner appealed to the Civil Service Commission (Commission). The Commission determined that the South Carolina address fell within the scope of Question 37 of the preemployment application, which required the petitioner to “state each and every previous residence since birth (include college residence, summer homes, military residence, etc.)”¹ Specifically, the South Carolina address utilized by the petitioner for a period of some months when he was employed by the Goose Creek Fire Department qualified as a “previous residence” for purposes of the question, and the Commission noted that it should have been disclosed. The Commission found the type of omission presented to be material as it could bear on an appointing authority’s determination whether

¹ The question called for the following details for each stated residence: dates, address (number, street and apartment number), city, county, state, zip code and landlord’s name and phone number.

a candidate meets its residency requirement and its ability to investigate and assess a candidate's background, especially where a sensitive position is at issue. Although the petitioner referenced two previous preemployment applications he submitted after appearing on Police Officer certifications issued to the appointing authority, the Commission determined that it was still the petitioner's burden to provide a preemployment application that was accurate and complete. Accordingly, the Commission upheld the removal of the petitioner's name from the subject eligible list.

In his request for reconsideration, the petitioner argues that reconsideration is warranted in that the background investigation unit was completely satisfied with his explication of the facts of his Goose Creek employment and lodging since he completed the preemployment application per that unit's instructions. In this regard, he asserts that he asked the unit, on each of the three occasions² when he met with it to receive the application, how he should fill out Question 37. The petitioner claims that notwithstanding the written direction to include items such as college residences and summer homes, the investigators told him not to include them and to only include places where he had indicia of domicile such as where he was registered to vote, had his car and driver's license registered and filed his taxes. The petitioner maintains that he made the background investigation unit aware of his Goose Creek employment and the fact that he had temporary lodging there but that he did not indicate the temporary lodging in response to Question 37 because he remained domiciled in Jersey City. He also maintains that he disclosed identical information on each of the three applications and that it would be unfair to disqualify him after he followed the background investigation unit's instructions. In support, the petitioner submits his certified statement and a copy of the preemployment application he completed in connection with Police Officer certification OL161489, wherein the petitioner did not indicate any South Carolina residence in response to Question 37.³

In response, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, argues that the petitioner has not satisfied the standard for reconsideration. In this regard, it argues that the only piece of new evidence the petitioner has submitted is his own self-serving certified statement, and he has not provided reasons his statement and its contents were not presented at the original proceeding. The appointing authority contends that even if the

² In addition to being certified to the appointing authority from the Fire Fighter eligible list at issue here, the petitioner was also certified to the appointing authority from the eligible list for Police Officer (S9999R), Jersey City twice, on April 1, 2016 (OL160387) and December 30, 2016 (OL161489) respectively. In disposing of certification OL160387, the appointing authority requested that the petitioner's name be retained because he was interested in future certifications. In disposing of certification OL161489, the appointing authority requested that the petitioner's name be removed as he was no longer interested.

³ The petitioner indicates that he no longer has a copy of the preemployment application he completed in connection with Police Officer certification OL160387.

information had been so presented, it would not have changed the Commission's decision. Specifically, the fact remains he failed to disclose his South Carolina residence, and it is of no consolation that he revealed his employment there. The appointing authority also asserts that there has been no clear material error. It maintains that the preemployment application provided specific and unambiguous instructions regarding the information the petitioner was required to submit, yet he failed to submit important information.

In reply, the petitioner states that he did not present his Police Officer preemployment applications at the prior proceeding because he had certified that the content of those applications was identical to that of the Fire Fighter application at issue here. With respect to the instructions he claims the background investigators gave him, the petitioner states that he did not present this at the prior proceeding because the issue the appointing authority had presented was his failure to disclose his "situation" in Goose Creek. Regarding that issue, the petitioner maintains that his original proofs demonstrated that he did disclose all details of his Goose Creek employment, including his living arrangements, and that his disclosures were satisfactory on two prior occasions. He proffers that when the Commission in the prior decision relied on the fact that his South Carolina living arrangements were not indicated in response to Question 37, it first became evident that such a basis for the decision was a material error in light of the instructions the background investigators had given him as to how to answer the question. It is for this reason that the petitioner is now presenting his claim regarding the background investigation unit's instructions.

In reply, the appointing authority reiterates that the issue here is the petitioner's failure to report his South Carolina residence in the face of Question 37's clear and unambiguous instructions. It contends that the petitioner, for the first time here, presents an empty allegation that he was told by the background investigators not to list college residences and summer homes and notes that he provides no names, dates or locations for these supposed communications. The appointing authority maintains that the allegation is not only factually inaccurate but also unpersuasive on two fronts. On the first front, it maintains that the idea that the background investigators told him to do the polar opposite of the written directions is not credible. The appointing authority notes that the petitioner presents only unsupported allegations devoid of any evidence such as e-mails or text messages documenting such conversations. On the second front, the appointing authority contends that the petitioner's attempt to characterize his South Carolina residence as a college residence or summer home defies logic. In this regard, it points out that the petitioner worked for a South Carolina fire department, which is not a college or university, and lived in South Carolina because he worked there. In the appointing authority's view, even if his South Carolina residence was a summer home, he was still required to report it. The appointing authority maintains that irrespective of any past applications, the petitioner was still required to accurately

submit the requested residence information on the Fire Fighter application at issue here. Additionally, the appointing authority argues that the petitioner's excuse for not presenting his claim regarding the background investigation unit's instructions at the original proceeding is weak in that there was nothing to stop him from doing so.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding, which would change the outcome of the case, and the reasons that such evidence was not presented at the original proceeding. A review of the record in this matter reveals that reconsideration is not justified.

The petitioner claims that he was told by the background investigators to omit from his response to Question 37 items such as college residences and summer homes despite the written directions to the contrary. Initially, the Commission does not find persuasive the petitioner's explanation as to why this claim was not presented at the original proceeding. In this regard, the appointing authority's position that the petitioner had falsified his preemployment application by failing to disclose therein residency information for the March 2016 to August 2016 period, when the petitioner was employed by a South Carolina fire department, was apparent in its written argument at the prior proceeding. The appointing authority also supplied a copy of the petitioner's preemployment application. As such, the petitioner very well could have presented his claim that he was told by background investigators to answer Question 37 in a manner contrary to the written directions. Regardless, the Commission finds that the claim does not change the outcome of this case. While the petitioner presents the claim in a certified statement, it is nevertheless unpersuasive because the petitioner only asserts generally that he was told by background investigators how to answer Question 37 without also providing specifics such as the names of the investigators who allegedly advised him and the dates and locations for these communications.

The petitioner also cannot rely on the fact that falsification with respect to his South Carolina residence was not raised when he previously appeared on two Police Officer certifications. While it may be true that the petitioner did not list his South Carolina residence in response to Question 37 on the second Police Officer preemployment application, it must also be recognized that the appointing authority had *other bases* to dispose of the Police Officer certifications with respect to the petitioner. Specifically, in disposing of the first Police Officer certification, the appointing authority requested that the petitioner's name be retained because he was interested in future certifications. In disposing of the second Police Officer certification, the appointing authority requested that the petitioner's name be

removed as he was no longer interested. Further, the Commission reiterates that the petitioner still had the burden to provide a preemployment application that was accurate and complete, and he cannot shift this burden by merely claiming that he filled out an application for another position within the same appointing authority. *See In the Matter of David Seybert* (CSC, decided May 18, 2005). Moreover, the Police Department and the Fire Department are separate entities. As such, the Commission does not find that the previous applications submitted in connection with Police Officer positions somehow precluded the appointing authority from requesting that the petitioner's name be removed from the subject Fire Fighter eligible list on the basis of falsification of the preemployment application, a legitimate basis for removal from an eligible list under Civil Service regulations. *See N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6.*

Further, the petitioner's reliance on his disclosure of his employment with a South Carolina fire department and disclosure of the fact that he had temporary lodging in connection with that employment is unavailing. As was stated in the prior decision, listing past employers is distinct from listing past residences. Regardless of the petitioner's position, repeated here, that he remained domiciled in Jersey City,¹ the Commission reiterates that the South Carolina address still qualified as a "previous residence" for purposes of Question 37. Moreover, merely disclosing the fact of having temporary lodging in connection with a position is hardly equivalent to providing a full response to Question 37, which specifically called for dates, addresses and the landlord's name and phone number. The Commission reiterates that such information is material as it could bear on an appointing authority's determination whether a candidate meets its residency requirement and is crucial to its ability to investigate and assess a candidate's background, especially where, as it is here, a sensitive position is at issue.

Accordingly, the petitioner has not presented a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ The Commission again finds it unnecessary to take a position on this specific issue.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF DECEMBER, 2018

Deirdre' L. Webster Cobb

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STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

 In the Matter of Michael Woods, Fire
 Fighter (M1544T), Jersey City

List Removal Appeal

CSC Docket No. 2018-740

ISSUED: AUGUST 3, 2018 (HS)

Michael Woods, represented by Michael L. Prigoff, Esq., appeals the removal of his name from the eligible list for Fire Fighter (M1544T), Jersey City on the basis that he falsified his preemployment application.

The appellant, a non-veteran, took and passed the open competitive examination for Fire Fighter (M1544T), which had a closing date of August 31, 2015. The resulting eligible list promulgated on March 11, 2016 and expires on March 10, 2019.¹ The appellant's name was certified to the appointing authority on January 27, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to the falsification of his preemployment application. Specifically, the appointing authority asserted that the appellant omitted a South Carolina address he used in connection with his employment with the City of Goose Creek (Goose Creek) Fire Department from March 2016 to August 2016.

On appeal to the Civil Service Commission (Commission), the appellant states that it is troubling that his name was removed from the subject eligible list since he previously submitted "virtually the same" preemployment application for employment with the Jersey City Police Department.²

¹ The eligible list was extended one year to March 10, 2019.

² Agency records indicate that the appellant's name appeared on the eligible list for Police Officer (S9999R), Jersey City. His name was certified to the appointing authority from that list on April 1, 2016 (OL160387) and December 30, 2016 (OL161489). In disposing of certification OL160387, the appointing authority requested that the appellant's name be retained because he was interested in

In response, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, maintains that the appellant falsified his preemployment application by omitting the South Carolina address. It also maintains that the appellant failed to satisfy the residency requirement as he had a break in his Jersey City residency from March 2016 to August 2016 due to his employment with the Goose Creek Fire Department. In support, the appointing authority submits, among other documents, a copy of the appellant's preemployment application. It is noted that no South Carolina address appears in response to Question 37, which instructed candidates to "state each and every previous residence since birth (include college residence, summer homes, military residence, etc.)."

In reply, the appellant contends that the appointing authority's position in this matter disregards the facts of his preemployment application and the appointing authority's positions on the two previous preemployment applications submitted for employment with the Jersey City Police Department, which the appellant now describes as "identical" to the preemployment application at issue in this matter. The appellant maintains that all three applications clearly disclosed his employment in South Carolina while maintaining his Jersey City residence. He notes that in response to Question 57 of the preemployment application, which instructed candidates to list present and past employers, the appellant listed the Goose Creek Fire Department as a past employer. He states that he set up a "temporary living arrangement" where other Goose Creek firefighters lived but returned to his Jersey City residence on a regular basis during the time he was working as a Goose Creek firefighter. The appellant states that his time in South Carolina was no different from a vacation or a trip out-of-state to visit friends or family. He submits certified statements in support.

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 Commission to remove an eligible's name from an eligible list when he 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 name from an eligible list was in error.

In this matter, it is of concern that the appellant omitted from his preemployment application the South Carolina address where he arranged to live

future certifications. In disposing of certification OL161489, the appointing authority requested that the appellant's name be removed as he was no longer interested. It is noted that the appellant does not provide copies of the respective preemployment applications he submitted in connection with these two earlier certifications.

during his employment with the Goose Creek Fire Department from March 2016 to August 2016. While it is the appellant's position that his sole legal residence remained in Jersey City during that timeframe,³ the South Carolina address nevertheless fell within the scope of Question 37, which required the appellant to "state each and every previous residence since birth," including "college residence" and even "summer homes." Clearly, the South Carolina address utilized by the appellant for a period of some months when he was employed by the Goose Creek Fire Department qualifies as a "previous residence" for the purposes of this particular question, and it should have been disclosed. The appellant's highlighting of the fact that he listed the Goose Creek Fire Department as a past employer in response to Question 57 is unavailing as Questions 37 and 57 respectively called for the appellant to disclose distinct items of information. It must be emphasized that it is the responsibility of an applicant, particularly an applicant for a sensitive position such as a Fire Fighter, to ensure that his preemployment application is a complete and accurate depiction of his history. In this regard, 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 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. An applicant must be held accountable for the accuracy of the information submitted on an application for employment and risks omitting or forgetting any information at his peril. *See In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991) (An honest mistake is not an allowable excuse for omitting relevant information from an application).

The type of omission presented here is material as such information could bear on an appointing authority's determination whether a candidate meets its residency requirement and is eligible for appointment. Such information is also crucial to an appointing authority's ability to investigate and assess a candidate's background, especially where a sensitive position is at issue. Further, the appellant's reference to two previous preemployment applications he submitted after appearing on Police Officer certifications issued to the appointing authority is of no moment based on the record in this matter as it was still his burden to provide a preemployment application that was accurate and complete. The appellant cannot shift this burden by merely claiming that he filled out an application for another position within the same appointing authority. *See In the Matter of David Seybert* (CSC, decided May 18, 2005). Accordingly, since the Commission has determined that there is a sufficient basis to remove the appellant's name from the subject eligible list based on his falsification of the preemployment application, it is not necessary to address whether the appellant satisfied the residency requirement.

³ As explained below, the Commission is taking no position on this specific issue.

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 1ST DAY OF AUGUST, 2018**



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