



STATE OF NEW JERSEY

In the Matter of Dawn Klutsarits,
Police Officer (S9999U), Paterson

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

CSC Docket No. 2019-3213

List Removal Appeal

ISSUED: DECEMBER 20, 2019 (JET)

Dawn Klutsarits appeals the removal of her name from the Police Officer (S9999U), Paterson, eligible list on the basis of falsification of the employment application.

The appellant took the Law Enforcement Examination (LEE) (S9999U),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on October 22, 2018 (OL181141). In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of falsification of her employment application. Specifically, the appointing authority asserted that, in response to questions listed in the preliminary employment application, the appellant listed that her driver's license was not previously suspended or revoked, and that she had not been charged or convicted of a crime. It added that, in response to the questions on the formal employment application, the appellant indicated that she was arrested on two prior occasions, and she failed to list the specific charges against her. Additionally, the appellant indicated on the formal employment application that she had not been previously involved with any domestic violence complaints. The appointing authority's background investigation revealed that, on September 28, 2013, the appellant was arrested for an incident of domestic violence in violation of *N.J.S.A. 2C:12-1A(1)*. Moreover, the background investigation revealed that the appellant's driver's license was suspended on three occasions, September 8, 2008, February 9, 2009 and on May 4, 2009.

¹ It is noted that the S9999U eligible list expired on March 30, 2019.

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that she did not falsify the employment application, but rather, she omitted information in response to the questions. In this regard, the appellant states that she did not understand some of the questions on the employment application and left them blank. The appellant adds that she did not recall that she was involved in a domestic violence incident or that her driver's license was suspended. In support, the appellant provides a copy of an August 5, 2019 polygraph report that was conducted by Mark P. Smith, Certified Polygraph Examiner. Specifically, the report indicates that the polygraph was used to determine if the appellant purposely attempted to mislead the appointing authority with respect to her answers on the employment application. Although the polygraph report confirms that the appellant omitted answers on the employment application, the report also indicates that, based on the appellant's responses at the time the polygraph was conducted, there was a high probability the appellant was truthful at the time she completed the employment application.

In response, the appointing authority provides documentation it initially relied on to remove the appellant 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 Commission to remove an individual from an eligible 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.

Initially, with respect to the polygraph report, it is noted that the results of a polygraph test may be considered, even without the other party's stipulation. *See State v. Domicz*, 377 *N.J. Super.* 515 (App. Div. 2005). However, the Commission is not bound by the results of a polygraph report. In this matter, the Commission finds that the polygraph report submitted by the appellant is not persuasive. In this regard, the polygraph report does not overcome that the appellant failed to list pertinent information on the employment applications. The appellant acknowledges, and the polygraph report confirms, that she omitted pertinent information from the employment applications. Given such admissions, the polygraph report cannot be used in this matter to establish that the appellant did not falsify the employment applications. Even if the appellant believed that she was being truthful at the time she completed the employment applications, as will be discussed more fully below, it was the appellant's responsibility to provide an

employment application that was fully completed and contained accurate information for the appointing authority's review.

With respect to the preliminary employment application, a review of the record confirms that the appellant omitted pertinent information with respect to her background on that application. Although the appellant states on appeal that she was uncertain about how to answer some of the questions, was unaware that her driver's license had been suspended, and did not recall that she was involved in a domestic violence incident, such arguments are not persuasive. Specifically, with respect to the information listed on the preliminary employment application, in response to the questions, "Have you ever been charged or convicted of an offense/crime" and "Has your driver's license ever been suspended or revoked in this State or any other state," the appellant checked "no." However, the record reflects that the appellant was involved in a domestic violence incident in September 2013, that she was arrested as a result of that incident, and that her driver's license was suspended on three occasions. Accordingly, the omissions from the preliminary application are clearly material.

With respect to the information listed on the formal employment application, the information provided on that application is contrary to the information listed on the preliminary application. Specifically, the appellant did not list on the preliminary application that she was arrested, however, she indicated on the formal employment application that she was, in fact, arrested. Additionally, she did not list on the formal application the specific charges against her, nor did she list that she was charged with domestic violence. In this regard, in response to the question on page 17 of the formal employment application, "Have you ever been charged or convicted of a crime, disorderly persons offense, Juvenile Delinquency or violation of a city ordinance," the appellant answered "yes" and wrote "[two] arrests, multiple parking tickets." She also indicated "unknown" in response to the questions pertaining to the charges against her. In response to the question on page 17 of the formal employment application, "Have you ever been the subject of a Domestic Violence complaint in this or any other State or jurisdiction, the appellant answered "no." Moreover, in response to the question on page 15 of the formal employment application, "Has your driver's license or registration ever been revoked or suspended in any State or province," the appellant checked "no," which mirrors the information she listed with respect to her driving history on the preliminary application. However, the appellant's driving history confirms that her license was suspended on three occasions on September 8, 2008, February 9, 2009, and on May 4, 2009. As noted above, the appellant clearly provided contrary information and omitted pertinent information on both applications with respect to her arrest and background.

It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Police Officer, to ensure that the employment application is a complete and accurate depiction of her 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 or her 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).

In this case, the appellant's omissions are sufficient cause to remove her name from the eligible list. It is clear that she failed to disclose material information in her background in response to the questions in the employment applications. Such omissions are clearly significant as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Further, with respect to the polygraph report, it does not matter that the appellant believed that she was telling the truth at the time she completed the applications, since the material omissions, in and of themselves, were sufficient cause to remove her name from the list.

It is recognized that municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). The public expects municipal Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, for the reasons set forth above, the appointing authority has presented sufficient cause to remove the appellant's name from the eligible list for Police Officer (S9999U), Paterson.

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 18th DAY OF DECEMBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries Christopher Myers
and Director
Correspondence Division of Appeals
 & Regulatory Affairs
 Civil Service Commission
 Written Record Appeals Unit
 P.O. Box 312
 Trenton, New Jersey 08625-0312

c: Dawn Klutsarits
 Vaughn McKoy
 Kelly Glenn