



STATE OF NEW JERSEY

In the Matter of Stephen Forbes,
Operating Engineer, Heating and Air
Conditioning (S0021A), South Woods
State Prison

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2020-1130

List Removal Appeal

ISSUED: FEBRUARY 27, 2020 (SLK)

Stephen Forbes appeals his removal from the eligible list for Operating Engineer, Heating and Air Conditioning (S0021A), South Woods State Prison, on the basis of an unsatisfactory criminal record.

By way of background, the appointing authority’s background report indicates the following charges: Assault (1968), Damage Property (1969), Disorderly Conduct (1969), Larceny (1970, 1991), Fraud – Insufficient Funds Check (1971), Possession of Stolen Property (1972, 1976, 1994), Marijuana- Possession (1973), Receiving Stolen Property (1976, 1984 - twice, 1994), Fugitive From Justice (1976), Arson (1991 - three times), Conspiracy to Commit Arson (1991), Burglary (1976, 1991, 1997), Conspiracy to Commit Burglary (1991), Possession of CDS/Analog – Schedule I, II, and III (1994, 1995), Manufacture/Distribute CDS (1994), Possession of CDS greater than 50G Marijuana (1995), Manufacture/Distribute CDS or Intent to Manufacture (1995), CDS – Manufacture/Distribute/People Who Inject Drugs – Heroin (1994, 1995), Theft By Unlawful Taking/Disposition (1996), Harassment (1996, 2008), Harassment (2008, 2009 – two times), Credit Card Fraud (1976), Theft (1977), Perjury (1980, 1995), False Swearing (1995), Theft by Deception (1995), CDS – Under Influence (1995), Simple Assault – Purposely Knowing (2008 – two times), Harassment (2009), Endangering-Abuse/Neglect (2009), Certain Persons Not to Have Weapons (1995), Use/Possession with Intent to Use Drug (1994, 1995), Possession of Stolen Vehicle (1972), Possession of Motor Vehicle Parts with Altered Identification (1994) and Conspiracy CDS – Manufacture/Distribute/People Who Inject Drugs - Heroin (1994). Additionally, the appellant has an active Final Restraining Order against him that

was filed in 2017 by D.F. Further, he was in State Prison from May 24, 1996 to August 10, 2001. Finally, the appellant only listed five arrests on his application (Distribution Possession – Cocaine - 1994, Possession of Stolen Property - 1976, Burglary - 1976, Stolen Property - 1971 and Car Theft - 1963).

On appeal, the appellant asserts that it has been over 25 years since he has been in any criminal trouble. He presents that he has been employed at the Marin Thermal Facility for over 16 years. However, the appellant indicates that this facility is being sold and will be manned by the new owner's staff, which means he will be out of work. Additionally, he highlights that the appointing authority is only 15 miles from his home while his current commute is 45 miles.

In response, the appointing authority states that it considers it a security risk to have an ex-offender employed by the Department of Corrections and in a position of authority over currently incarcerated people. The appointing authority indicates that incumbents in the subject title work with inmates that are in the process of obtaining training to obtain their Boiler Operator's license via a vocational program that it offers. The position may require the Operating Engineer to be in charge of an inmate that is attempting to earn a Blue Seal Operator's license. This includes monitoring the hours an inmate spends in the powerhouse area, as well as training and assigning work to the inmate. It states that although it is common to have volunteers that may be ex-offenders who work with the inmate population through its education and religious services programs, those volunteers are escorted by custody staff and are not in a position of authority over inmates. It argues that the appellant's name should not be restored to the subject list based on the seriousness of his prior crimes, his failure to report his complete criminal history, his prior incarceration in State Prison and the security risk involved with having an ex-offender being in a position of authority over current inmates.

In reply, the appellant reiterates that he has not been arrested since he was incarcerated for drugs in 1996. He denies that a FRO was filed against him by D.F. in 2017. Instead, the appellant claims that this FRO was actually filed against another person, he includes this other person's birth certificate as evidence, and states that the records should be checked. He acknowledges that he has an extensive criminal history prior to 1996; however, he explains that he did not mention all the crimes he committed as he cannot remember them. The appellant argues that it has now been 24 years since he has had a criminal issue, he considers himself rehabilitated and presents that he does not take any illegal drugs.

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.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.

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, it is noted that the appellant has not proven that the FRO and the criminal charges¹ listed previously are not his. The appellant has simply provided the birth certificate of another person who he claims is the one who the FRO was issued against and said that the records should be checked. Concerning the criminal charges that were issued after 1996, the appellant has not provided any evidence that they are not his and has merely stated that he has not had any criminal issues since 1996. However, even accepting the appellant's statements, the appointing authority had valid reasons to remove his name from the list. Initially, the appellant acknowledges that he has an extensive criminal history prior to 1996 and further admits that he did not list all crimes as he could not remember them. However, candidates are held accountable for the accuracy of their application and any failure to include information was at his peril. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Therefore, even if there was no intent to deceive,

¹ *N.J.S.A.* 11A:4-10 only indicates that eligibles for a law enforcement, fire fighter or correction officer title may be questioned as to any arrest. It is unclear as to whether all of the above charges were for convictions or if some were only for arrests. As the subject title was not for a law enforcement title, only the appellant's criminal conviction record may be considered.

in light of the appellant's extensive and serious criminal history, his failure to disclose his complete criminal conviction history was material. At minimum, the appointing authority needed this information to have a complete understanding of his background in order to properly evaluate his candidacy. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). Moreover, while the Commission appreciates that appellant's efforts to rehabilitate his life, even if the appellant had disclosed his entire criminal conviction history, his criminal history is adverse to the position sought given the nature of the position, which includes authority over inmates. *See In the Matter of Benjamin Olaskowitz* (MSB, decided August 8, 1995) and *In the Matter of Martin V. Carluccio, Communications Officer (C1516H)* (MSB, decided May 21, 2008). Finally, while it is unfortunate that the appellant is losing his current employment and the Commission can appreciate his desire for a shorter commute, the appellant's personal circumstances are not relevant to the appointing authority's determination as to whether his criminal background is adverse to the position sought.

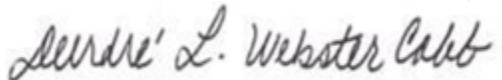
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Operating Engineer, Heating and Air Conditioning (S0021A), South Woods State Prison eligible list.

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 26th DAY OF FEBRUARY, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Stephen Forbes
Jennifer Caignon
Kelly Glenn