



STATE OF NEW JERSEY

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

In the Matter of R.B., Correctional
Police Officer (S9988A), Department
of Corrections

List Removal Appeal

CSC Docket No. 2020-2231

ISSUED: OCTOBER 2, 2020 (ABR)

R.B. appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections (DOC) eligible list on the basis of an unsatisfactory background report and false statement of material fact.

The appellant, a non-veteran, applied for and passed the examination for Correctional Police Officer (S9988A), which had a closing date of January 31, 2019. The subject eligible list promulgated on June 27, 2019 and expires on June 26, 2021.

The appellant’s name was subsequently certified to the appointing authority. The appointing authority removed the appellant’s name from the subject eligible list on the basis of an unsatisfactory background report and false statements of material fact. Specifically, with regard to the appellant’s background, the appointing authority asserted, in relevant part, that the appellant acknowledged in a written statement a friend regularly gave him tetrahydrocannabinol (THC) cartridges to sell to a coworker. The appellant added that he “underst[ood] that it [was] illegal” and that he “regret[ted] immensely being tied into [it].” Additionally, the appointing authority found that the appellant was demoted in rank while serving in the United States Army National Guard (Army National Guard) because he failed a drug screening test. Furthermore, it indicated that the appellant was charged with possession of 50 grams of marijuana or less, in violation of *N.J.S.A. 2C:35-10A(4)*, in July 2010 and that the charges were later dismissed. Finally, as to the appointing authority asserted that the appellant made a false statement of material fact by denying during an August 30, 2019 home interview that he used or experimented with illegal drugs or narcotics within the preceding two years. It proffers that this information was false, as the

appellant later admitted in a subsequent written statement that he “very occasionally” used marijuana and had used it as recently as January 2019.

On appeal, the appellant argues that he was transparent about his marijuana usage, as he disclosed it in multiple parts of his application and furnished paperwork from his failed urinalysis from the Army National Guard. He states that he never denied using marijuana during his home interview and spoke about the topic numerous times while undergoing a psychological interview in conjunction with Phase 4 of the appointing authority’s pre-employment processing. As such, he requests that his name be restored to the subject eligible list.

In response, the appointing authority asserts that there was a sufficient basis to remove the appellant’s name from the subject eligible list based upon an unsatisfactory background and false statements of material fact. In this regard, it maintains that after medical and psychological evaluations and prior to a pre-academy orientation, a second background check of the appellant revealed several issues with his background and demonstrated that he made false statements of material fact during his home interview. With regard to his background issues, it states that this second investigation revealed that the appellant failed a drug screening test while serving in the Army National Guard, supplied THC cartridges to a coworker on a regular basis, and used marijuana as recently as January 2019. As to the false statements of material fact, the appointing authority indicates that the appellant denied during his home interview that he used, purchased and/or sold any controlled dangerous substances, but later admitted in written statements that he used marijuana as recently as January 2019 and that he illegally sold THC cartridges to a coworker on a regular basis. In support, the appointing authority submits copies of its investigation report, the appellant’s pre-employment application, written statements the appellant submitted after his home interview, and emails that it maintains evidence the appellant’s solicitation of prostitution in November 2015.

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 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:4-4.7(a)11 allows the Commission to remove an eligible’s name from an eligible list for other valid reasons. *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 the instant matter, the record indicates that the appointing authority subjected the appellant to a psychological examination. Pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. *See also*, the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be "real," the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate's possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information. *See also N.J.A.C. 4A:4-6.5(b)* (An appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment). The Commission notes that the ADA's restrictions on psychological and medical examinations apply regardless of whether an individual has a disability. *See Roe v. Cheyenne Mountain Conference Resort*, 124 F.2d 1221, 1229 (10th Cir. 1997). Thus, in subjecting the appellant to a psychological examination, which he passed, and absent disqualification issues, his appointment is mandated.

In this case, it appears that the appointing authority did not strictly conform with the precise requirements of the ADA. The record establishes that the appointing authority did not fully review the appellant's background before conducting the physical and medical examination. Consequently, the appointing authority did not comply with the technical requirement of rendering a conditional offer of employment, based upon a complete review of the candidate's background, prior to administering the psychological examination. While the appointing authority would be well served to revise its candidate evaluation procedures to avoid having this issue raised in future cases, based upon the totality of the circumstances presented in this matter, it appears that the appellant's unsatisfactory background, which includes an acknowledgment that he sold THC cartridges to a coworker, provides sufficient cause to remove his name from the eligible list. *See In the Matter of Scott Gordon* (MSB, decided December 18, 2002); *In the Matter of Curtis L. Dorch* (MSB, decided September 25, 2002).

The Commission emphasizes that these conclusions in no way condone the actions of the appointing authority in this case. In this regard, the Commission directs the appointing authority to strictly comply with the requirements of the ADA in all future cases.

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 30TH DAY OF SEPTEMBER, 2020

Deirdre' L. Webster Cobb

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