



**STATE OF NEW JERSEY**

In the Matter of Matthew Mittleman,	:	<b>FINAL ADMINISTRATIVE ACTION</b>
Police Officer (S9999A), Hoboken	:	<b>OF THE</b>
	:	<b>CIVIL SERVICE COMMISSION</b>
	:	
CSC Docket No. 2021-1147	:	
	:	
	:	List Removal Appeal
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**ISSUED: MAY 24, 2021 (SLK)**

Matthew Mittleman, represented by James J. Carroll, Esq., appeals the decision to remove his name from the Police Officer (S9999A), Hoboken eligible list on the basis that he falsified his application.

The appellant took the open competitive examination for Police Officer (S9999A), Hoboken, which had an August 31, 2019 closing date, 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. Specifically, the appointing authority’s background report indicated that in response to question 14 on the appellant’s application, he indicated that he did not have any problems in school and/or college. However, the appellant’s college indicated that he was charged with several residence life violations including an October 2010 smoking/possession of controlled substance violation, a December 2010 health and safety violation, a January 2011 smoking/possession of controlled substance violation, a November 2011 health and safety violation, and a December 2011 under 21 consumption violation. Further, in response to question 85 where the appellant was asked if he had ever been held as a suspicious person or investigated by any law enforcement of private security for any reason, the appellant answered, “NO” and “N/A.” However, the Watchung Police Department indicated that in December 2010, the appellant was a passenger in a vehicle which was stopped in an area known to be a popular location among controlled dangerous substance (CDS) users. The Police Officer stopped the motor vehicle which was occupied by the appellant and two other

males and the driver was taken into custody and charged with possession of CDS, possession of CDS paraphernalia and littering. The police investigation report narrative indicated that the officer spoke to the appellant and he had bloodshot eyes and dilated pupils that did not react to changes in light. The appellant and the other passenger were released, and the appellant was allowed to drive the driver's car away from the scene. Moreover, in response to question 82 asking if he had ever been charged, indicted, or convicted of any violation of the criminal law, the appellant answered "NO" and "N/A" where the New Jersey Automated Complaint System indicated that in October 2014, he was charged with hazing, which was amended to harassment, and then dismissed. Finally, in response to question 61 where the appellant was asked if he ever made a prior application with this or any other police/law enforcement organization, the appellant answered that he applied to the New Jersey Transit Police Department (Transit Police) in December 2018 and the status was pending. However, the Transit Police indicated that the appellant applied in February 2020 and that he was invited to take a physical examination on August 12, 2020, but he was a no show.

Also, separate from the above falsification issues, the appointing authority's background report indicated that the New Jersey Automated Traffic System indicated that the appellant was charged in October 2009 with violation of restrictions on a provisional driver's license and in March 2010 with use of a hand-held cell phone while driving. Further, the New Jersey Automated Complaint System indicated that in March 2015, the appellant was charged with drinking-open container of alcohol, which was dismissed.

On appeal, concerning the college violations, the appellant asserts that he has not made any false statements or withheld material information. He states that he does not recall, nor did he commit any of those alleged violations. The appellant indicates that he only recalls one interaction where he was advised to attend a meeting based on a student resident life matter. However, the appellant presents that he did not believe that to be a "problem" as requested in question 14. He contends that this was merely a meeting and not a punitive session for any alleged activity. Further, the appellant notes that the matter occurred over a decade ago and he could not even recall the matter without it being refreshed by a report. The appellant notes that the letter from the college merely sets forth allegations but there is nothing additional attached demonstrating that he received notice of the alleged offenses or was otherwise made aware of these allegations. He asserts that he did not withhold anything because the alleged violations did not occur and should not be credited against him as falsification.

Regarding his application to the Transit Police, the appellant states that he indicated on his application that his application with Transit Police was still pending because it had not been decided. He presents that in March 2020, there was a state of emergency in New Jersey due to COVID-19, and he decided not to participate any

further in the Transit Police application process due to the state of emergency. The appellant indicates that he never received a final determination from the Transit Police. Therefore, he believed that his application was not considered final and was still pending. He notes that he acknowledged his candidacy for a position with the Transit Police on his application. Therefore, the appellant argues that he did not withhold any material information. At most, he believes that he used the term “pending” incorrectly because of his misunderstanding of the Transit Police process. He presents caselaw that stands for the proposition that a misstatement in the understanding of a term does not amount to a material withholding and deception and asserts that his answer should be deemed as being honest and accurate.

Referring to previous charges or indictments, the appellant indicates that his attorney in his hazing matter advised him that he was charged with a disorderly persons offense and not a crime. While he acknowledges that this is incorrect, he presents that he did disclose the offense in response to question 69. Therefore, the appellant argues that his misunderstanding did not amount to material withholding or deception.

Concerning previous detention by law enforcement, the appellant presents that the incident in question occurred over 10 years ago and he asserts that there was nothing in his interaction with police to indicate that he was under suspicion or the subject of an investigation. He notes that he was allowed to drive the vehicle from the scene. The appellant states that he was merely a passenger and no arrest or charges were levied against him and he had never seen the report that was generated until now. He contends that there was no way of him knowing that the police considered him to be subject to the investigation.

In response, the appointing authority stands by the reasons for the appellant’s removal as indicated in its background report.

## 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.

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.

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient 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.

The record in this matter indicates that the appellant had continuous negative interactions with authority from October 2009 through March 2015. Additionally, the appellant indicated that on his application that his application with the Transit Police was pending, when it indicated that he was no longer under consideration for a position because he did not show for his exam in August 2020. The appellant explains that he did not indicate on his application the alleged violations with residence life because he never received notice regarding them and, therefore, he was not aware that there was a "problem" with school as asked on his application. Further, he mistakenly believed that the hazing charge against him was a disorderly persons offense and not a crime as asked on his application and he did disclose this incident elsewhere on his application. Additionally, he contends that he did not know that he was considered under suspicion or investigated by law enforcement as asked on the application as only the driver was arrested for the December 2020 drug stop and he was allowed to drive away from the scene. Finally, he states that he mischaracterized his application status with the Transit Police as being pending when it had reached a final determination because he misunderstood its hiring process.

Initially, it is noted that candidates are accountable for the accuracy of their applications. See *In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Further, even if there was no intent to deceive, in light of the appellant's negative interactions with authority, the appellant's failure to fully and accurately disclose this information 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).

Regardless, even if the Commission accepted the appellant's explanations concerning his failure to fully and accurately disclose the requested information on his application, the appellant's history or negative interactions with authority indicate that he currently lacks the good judgment and integrity to be a Police Officer. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost

confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Additionally, even after the August 31, 2019 closing date, the record indicates that the appellant was scheduled for an exam in August 2020 with the Transit Police, but he did not show.

Therefore, the Commission finds that it was appropriate for the appointing authority to remove his name from the Police Officer (S9999A), Hoboken 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 19<sup>TH</sup> DAY OF MAY, 2021

*Deirdre' L. Webster Cobb*

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