

B-6



STATE OF NEW JERSEY

In the Matter of Humza Abdul-Haqq,
Correction Officer Recruit (S9988R),
Department of Corrections and Fire
Fighter (M2543M), Town of Kearny

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2016-861 and
2016- 4447

List Removal Appeals

ISSUED: DEC 1 2 2016 (JET/CSM)

Humza Abdul-Haqq, represented by Kenneth J. Hall, Esq., appeals the attached decision of the Division of Agency Services (Agency Services), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections eligible list due to an unsatisfactory background report and falsification of the employment application. Mr. Abdul-Haqq also appeals the removal of his name from the Fire Fighter (M2543M), Town of Kearny eligible list on the basis of falsification of the employment application. These appeals have been consolidated due to common issues presented.

Correction Officer Recruit

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the Department of Corrections (DOC) on May 23, 2013. In disposing of the certification, DOC requested the removal of the appellant's name on the basis of an unsatisfactory background report and falsification of the employment application. Specifically, it asserted that the appellant was charged on February 19, 2010 with No Fare Evasion in violation of Interstate and Port Authorities and Commissions code 32:1-146.8(4) (dismissed). The charge was amended to Theft of Services in violation of N.J.S.A. 2C:20-8A, and he was fined. Further, on August 29, 2009, the appellant was charged with Simple

Assault in violation of *N.J.S.A. 2C:12-1A* (dismissed); on August 26, 2000 with Defiant Trespasser in violation of *N.J.S.A. 2C:18-3B* (dismissed); and on August 26, 2000 with Manufacturing or Possessing Burglar Tools in violation of *N.J.S.A. 2C:5-5* (diverted). DOC also indicated that the appellant did not disclose on the employment application that he was terminated from employment. On appeal to Agency Services, the appellant argued that his name should be restored to the eligible list. Agency Services upheld DOC's request to remove the appellant's name from the subject eligible list.

Fire Fighter

The appellant took the open competitive examination for Fire Fighter (M2543M), achieved a passing score, and was ranked on the subsequent eligible list.¹ The appellant's name was certified to Kearny on March 17, 2016. In disposing of the certification, Kearny requested the removal of the appellant's name on the basis of falsification of the employment application. Specifically, Kearny asserted that the appellant was charged on February 19, 2010 with Theft of Services in violation of *N.J.S.A. 2C:20-8A* but failed to list this on his application. It also asserted that he only disclosed five motor vehicle violations on his application but its review of the New Jersey Automated Traffic System Ticket Inquiry Display indicated he received 10 motor vehicle violations.

Correction Officer Recruit Appeal

On appeal, the appellant maintains that his name should be restored to the eligible list. Specifically, the appellant asserts that the minor incidents in his background are not sufficient to bar him from employment as a Correction Officer. Further, the appellant states that he was not guilty of the charges against him, and he only paid a small fine for the Theft of Services charge. He adds that a disorderly persons offense is a not a crime pursuant to *N.J.S.A. 2C:1-4*. In this regard, the appellant explains that a disorderly persons offense is a minor infraction and should not be used as a way to prevent him from obtaining a position as a Correction Officer Recruit. Additionally, the appellant avers that the Simple Assault charge was dismissed because he did not assault anyone, and he was only a juvenile at the time he was charged with the incidents on August 26, 2000. As such, it is a violation of his due process rights for DOC to use these incidents against him to disqualify him from employment. The appellant contends that he is now a responsible adult and gainfully employed. Moreover, the appellant asserts that DOC has not provided any evidence to show that he was terminated from employment at Planned Lifestyle Services.

¹ It is noted that the Fire Fighter (M2543M), Kearny eligible list expired on December 12, 2015 after reaching its statutory maximum duration of four years.

In response, DOC maintains that the appellant's name should be removed from the eligible list on the basis of his unsatisfactory criminal background and falsification of the employment application. It explains that the employment application that the appellant submitted at the time of pre-employment processing clearly explained the criteria for removal. It adds that the charges against the appellant as well as his failure to disclose the information on the employment application pertaining to his termination from Planned Lifestyle Services is sufficient to remove his name from the eligible list. Moreover, DOC contends that its goals and objectives are to select candidates who exhibit respect for the law in order to effectively manage the day-to-day operation of a prison system.

In support, DOC provides a copy of an employment contact form dated June 10, 2014 completed by Planned Lifestyle Services. The form indicates that the appellant did not resign in good standing. Specifically, it indicates that the appellant threw a chair and other front desk items during an altercation with his supervisor.

Fire Fighter Appeal

On appeal, the appellant simply states that he truthfully answered all of the information required on the application and in no way falsified any information.

Although provided the opportunity, Kearny and the appellant did not provide the Commission with any additional information or arguments to review in this matter.

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:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows for the removal an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for an appointment. *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.

Correction Officer Recruit

In this matter, DOC argues that the appellant failed to list on the employment application that he was terminated from employment at Planned Lifestyle Services. A review of the employment contact form completed by Planned Lifestyle Services indicates that the appellant did not resign in good standing and he engaged in an altercation with his supervisor. Although the appellant argues he was not terminated from employment, he did not provide any substantive information to refute the information on the employment contact form. Since Planned Lifestyle Services completed the employment contact form, it is sufficient to confirm that the appellant was terminated from employment. Accordingly, the appellant did not persuasively refute DOC's argument that he falsified the employment application.

It is clear that the appellant did not properly complete the employment application. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correction Officer Recruit, to ensure that his employment 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 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 his name from the eligible list. The appellant's contention that he was not terminated from Planned Lifestyle Services is unpersuasive since it is clear that he failed to disclose information in his background in response to the questions in the employment application.

Additionally, the appellant's arrest report indicates that he was arrested and charged with Simple Assault and Theft of Services. He was also arrested and charged as a juvenile with Defiant Trespasser and Manufacturing or Possession of Burglar tools. While the appellant asserts that these incidents were minor, the arrests underlying the charges may still be considered. Further, the appellant was an adult at the time of his arrests in August 2009 and February 2010. Although the appellant was a juvenile when he was charged with the incidents on August 26, 2000, the appellant's juvenile offense may be considered among the "other sufficient reasons" to remove him from the subject eligible list if the offense adversely relates to the employment sought. See e.g., *In the Matter of Tracey Shimonis*, Docket No. A-

3963-01T3 (App. Div. October 9, 2003). *N.J.A.C.* 4A:4-4.7(a)1 recognizes that an eligible may be removed from an eligible list for any of the causes listed in *N.J.A.C.* 4A:4-6.1 for denying eligibility or appointment, including other sufficient reasons. Further, although the appellant has presented some evidence of his rehabilitation and states that he is now gainfully employed, it is noted that his last arrest occurred less than three years before the date that he was certified for the Correction Officer Recruit position. While it is commendable that the appellant showed some progress in changing his life for the better, his evidence of rehabilitation cannot overcome his currently unsatisfactory record. Further, the nature of the arrests clearly adversely relates to the title of Correction Officer Recruit. In this regard, it is recognized that Correction Officers, like 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). Accordingly, the appellant's record constitutes sufficient cause to remove his name from the eligible list for Correction Officer Recruit (S9988R).

Fire Fighter

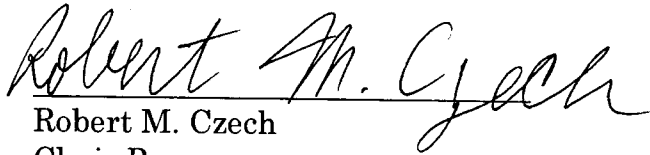
In this matter, although provided the opportunity to provide additional information in support of his contentions, the appellant only argued that he did not falsify his application. However, in support of its request, Kearny submitted the relevant copies of the appellant's application, New Jersey Automated Complaint System Complaint Inquiry, and New Jersey Automated Traffic System Ticket Inquiry Display which indicate that he did not disclose the theft charge and additional motor vehicle violations on his application. Therefore, it is clear that the appellant has not sustained his burden of proof and his omissions are sufficient cause to remove his name from the Fire Fighter (M2543M), Kearny eligible list. See *D'Alessio, supra*.

ORDER

Therefore, it is ordered that these appeals 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 7th DAY OF DECEMBER, 2016



Robert M. Czech
Chair Person
Civil Service Commission

Inquiries
and
Correspondence

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c: Humza Abdul-Haqq
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STATE OF NEW JERSEY
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July 31, 2015

Humza Abdull-Haqq

Title Correction Officer Recruit
Symbol: S9988R
Jurisdiction: Department of Correction
Certification Number: JU13D01
Certification Date: 05/23/2013

Initial Determination: Removal – Unsatisfactory Background Report

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C.4A:4-6.1(a) 6, which permits the removal of an eligible candidate's name from the eligible list for unsatisfactory Background Report.

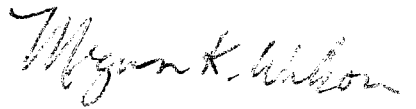
After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director
Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the State Certifications Supervisor, Wilma Rodriguez

A handwritten signature in cursive script that reads "Mignon K. Wilson".

Mignon K. Wilson
Human Resource Consultant