

B-16



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Joseph Rosado,  
Correction Officer Recruit (S9988T),  
Department of Corrections

List Removal Appeal

CSC Docket No. 2016-3732

ISSUED: **DEC 09 2016** (HS)

Joseph Rosado, represented by Michael L. Prigoff, Esq., appeals the removal of his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections, on the basis that he falsified his preemployment application.

The appellant, a non-veteran, took and passed the open competitive examination for Correction Officer Recruit (S9988T), which had a closing date of January 8, 2015. The resulting eligible list promulgated on July 23, 2015 and expires on July 22, 2017. The appointing authority requested the removal of the appellant's name due to his falsification of his preemployment application. Specifically, the appointing authority asserted that the application defined "charge" to include any "indictment, complaint, summons, and information or other notice of the alleged commission of any offense." It further asserted that in response to Question 46 on the application, "Have you ever been arrested, indicted, charged with or convicted of a criminal, sexual, or disorderly persons offense in this state or any other jurisdiction as a juvenile or an adult?" the appellant responded in the negative. However, supporting documentation from the Family Automated Case Tracking System indicated that in 2005, the appellant was charged with criminal mischief in violation of *N.J.S.A. 2C:17-3B(2)*, which was referred to a juvenile referee and dismissed when the complainant failed to appear. The appointing authority also submitted the relevant sections of the appellant's preemployment application in support.

On appeal to the Civil Service Commission (Commission), the appellant explains that on April 11, 2005, when he was 16 years old, he visited the house of a classmate to "make peace" over an earlier argument. After the appellant knocked on the classmate's door, the classmate emerged, pushed the appellant, and punched him in the eye, requiring him to be taken to the hospital. The appellant's father filed a complaint against the classmate, who on May 16, 2005, appeared at police headquarters to be served with a juvenile delinquency complaint. At that time, the classmate's father filed a criminal mischief complaint against the appellant for allegedly damaging his screen door on April 11, 2005. The appellant believes that the classmate's complaint was retaliatory since he did not damage the screen door and the complaint was filed one month after the alleged incident and "more likely than not" only after learning of the appellant's assault complaint. The pertinent police report indicates that the appellant was not taken into custody and that the criminal mischief complaint was to be mailed to the appellant's residence. However, the appellant contends that there is no documentation that would demonstrate that the criminal mischief complaint was ever mailed. He certifies that he had no knowledge of the official court proceedings and was never served with a criminal complaint. Although he recalls going to court over the matter, his understanding was that it was for the classmate's assault charge. The appellant's mother and father also certify that: they were "completely unaware of any formal charges having been brought against [the appellant];" they were not served with a complaint; and although they recall receiving a summons for the appellant to appear in juvenile court, it did not mention any charge filed against the appellant, and their understanding was that the proceedings solely concerned the case against the classmate, who did not appear. The appellant's father also certifies that the damage to the classmate's door was mentioned in court, but he thought it was a civil complaint for damages and remained unaware that the appellant had been charged. Based on the preceding, the appellant argues that the removal of his name from the subject eligible list is not warranted. In support, he submits police reports, among other documents.

In response, the appointing authority stands with its original submission of documentation and decision to remove the appellant's name from the subject eligible 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 eligible's name from an employment list when he 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 name from an eligible list was in error.

In this matter, the appointing authority removed the appellant's name from the subject eligible list for failing to disclose his 2005 juvenile charge on his preemployment application. In *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), in falsification cases, the court 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. Initially, the pertinent police report indicates that the appellant was not taken into custody. Additionally, based on the certifications of the appellant and his parents, it appears that they were not aware that he was formally charged with a juvenile offense. Although they acknowledge going to court, they apparently understood that the proceedings only related to the charge against the classmate and a civil complaint to recover damages for the classmate's door.

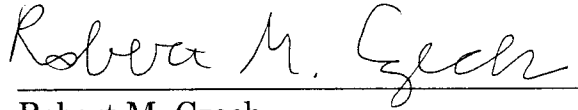
It is also doubtful that the 2005 juvenile charge by itself would reflect adversely on the appellant's suitability for employment. In this regard, the alleged offense does not appear to have been serious in that the appellant was accused of banging on and damaging a screen door when he was 16 years old. The alleged offense occurred approximately 10 years before the closing date for the subject examination and was the only such incident. Moreover, the appellant denies he damaged the screen door, the complainant failed to appear before the juvenile referee and the charge was dismissed. In other words, this charge by itself cannot be considered material to the position sought. Based on the foregoing, the Commission finds that the appellant did not make a false statement of a material fact or attempt any deception or fraud. *See, e.g., In the Matter of Giuseppe Tubito* (CSC, decided April 9, 2014); *In the Matter of Julio Rivera* (MSB, decided February 11, 2004). Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the Correction Officer Recruit (S9988T), Department of Corrections eligible list.

### ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the eligible list for Correction Officer Recruit (S9988T), Department of Corrections for prospective employment opportunities.

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 7<sup>TH</sup> DAY OF DECEMBER, 2016



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

- c. Joseph Rosado  
Michael L. Prigoff, Esq.  
Elizabeth Whitlock  
Kelly Glenn