



STATE OF NEW JERSEY

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

In the Matter of Moja Spencer,
County Correction Officer (S9999R),
Essex County

CSC Docket No. 2016-3816

List Removal Appeal

ISSUED: DEC 15 2016 (CSM)

Moja Spencer appeals the removal of his name from the eligible list for County Correction Officer (S9999R), Essex County, on the basis of falsification of his employment application.

In disposing of the December 1, 2015 certification, the appointing authority requested the removal of the appellant's name, contending that he had falsified his application. In its request, the appointing authority stated that the appellant indicated on his application that he was arrested in New York City for marijuana and the charge was dismissed and sealed. However, on the "False Swearing" portion of his application, the appellant indicated that he never had any criminal records expunged and that he was placed on "parole" for one year after being arrested in New York City for marijuana. The appointing authority maintained that this contradicted his answer that his arrest in New York City was dismissed. Rather, he was found guilty of the marijuana charge and placed on probation for one year.

On appeal, the appellant states that he indicated on his application that he was arrested for marijuana in 2004 and that the charges were dismissed and sealed after he appeared in court. In this regard, he notes that the judge advised him on the day of his court appearance that, because it was a first time offense, he would be placed on a conditional probation for a period of one year. Thus, since he was not arrested within the next year, the charge was dismissed. With respect to the "false swearing" application, the appellant states that he answered no to the questions if he ever had any records expunged or pardoned because it was his understanding

that the charges against him were dismissed and sealed, not expunged or pardoned. The appellant provides documentation which evidences that his record was sealed and that the marijuana charges against him were dismissed in September 2005.

Although provided the opportunity, the appointing authority did not provide any additional information for the Civil Service Commission 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 removal of 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:4-6.3(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.

While falsification of an employment application will justify list removal, particularly for law enforcement positions, this is not the case in this situation. In this case, in response to question #1, the appellant indicated on his application that he was arrested for possession of marijuana on September 23, 2004 and that the charges were dismissed and his record sealed. On the "False Swearing" application, the appellant indicated that he did not have any records expunged or pardoned. He also indicated that he was arrested in 2004 for possession of marijuana, the case was dismissed, and he was placed on probation (no parole) for a year. Although the appointing authority indicated in disposing of the certification that he falsified his application because his responses on the application and the "false swearing" document were contradictory, the court documentation provided by the appellant clearly indicates that the appellant's record was sealed and that the charges against him were dismissed in September 2005. Contrary to the assertion by the appointing authority, there is no evidence that he was found guilty of the charge or that the appellant sought to have his record expunged. In fact, the appellant's application indicates that he disclosed all information material to his background for consideration. Further, the appointing authority has not rebutted the documentation or arguments provided by the appellant in this appeal. Therefore, there is nothing in the record to demonstrate that the appellant falsified his application.

While the appellant's name is being restored to the eligible list, a review of the certification record indicates that one permanent appointment was of an eligible who was listed in a lower position on the certification and no higher listed eligible was recorded as interested and reachable. Therefore, the appellant's name should be recorded as bypassed on certification OL151498.

ORDER

Therefore, it is ordered that this appeal be granted.

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



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