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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Ayanah McCall,
Police Officer (S9999R), City of
Newark

List Removal Appeal

CSC Docket No. 2016-2937

ISSUED: **FEB 10 2017** (ABR)

Ayanah McCall appeals her removal from the eligible list for Police Officer (S9999R), City of Newark (Newark), on the basis of an unsatisfactory background report and falsification of her application.

The appellant took the open competitive examination for Police Officer (S9999R), Newark, which had a closing date of September 4, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 2, 2014 and expires on May 1, 2017. The appellant's name was certified to the appointing authority on August 27, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background report and falsification of her Background Investigation Questionnaire (Questionnaire). Specifically, the appointing authority asserted that the appellant was charged with harassment in violation of *N.J.S.A. 2C:33-4* in March 2013 based on allegations that she perpetrated the following acts against the alleged victim: made vulgar comments about her on social media, threatened her with bodily injury via text message, perpetrated an assault against her and committed other acts likely to cause alarm and annoyance to her. The appointing authority alleged that the appellant falsified her Questionnaire by failing to disclose that charge. The appointing authority also determined that the appellant falsified her Questionnaire by failing to disclose all of her gang connections. Specifically, it noted that its background investigation revealed that the appellant failed to disclose the gang affiliations of a former boyfriend and the father of her best friend's child. The background investigation report also noted that the appellant had removed images from her Facebook page.

which depicted her flashing gang hand signs associated with the Grape Street Crips and which showed her with various Crips and Bloods gang members. It noted that these images had been present on her Facebook page at the time of a previous background investigation by the appointing authority in January 2014.¹ The appointing authority's background investigator also indicated that the appellant was evasive when questioned about her affiliation with any street gangs during an interview.

On appeal to the Civil Service Commission (Commission), the appellant argues that her removal from the subject eligible list was improper because the appointing authority's background investigation is inaccurate. She stresses that she has passed multiple background checks, including for a Security Officer Registration Act (SORA) license, and for employment with the United States Postal Service and the Port Authority of New York and New Jersey. She contends that the harassment charge was not a disorderly persons offense and that a friend of hers on the police force agreed. She acknowledges that she did not list the harassment charge in response to a question in the Questionnaire that asked she was ever "arrested for or charged with a violation of the disorderly person's act or city ordinance" but stresses that she disclosed the incident in response to a different question about giving testimony, where she stated that she "gave testimony on or about March 2013 regarding an altercation between two acquaintances and [her]self." She suggests that if she realized that both questions were asking about the same thing that she would have elaborated on the harassment complaint she filed, as well as the counter-complaint for harassment filed against her. With respect to any gang affiliations, the appellant expresses concern that her removal from the subject eligible list was based solely upon the fact that she knows some gang members, including her brother and the father of her best friend's child. She contends that in her Questionnaire, she truthfully stated that she did not have any current or past affiliations with any street gang or gang sets. She stresses that she told the background investigator about her brother's gang affiliation and does not condone his lifestyle. She emphasizes that because she was raised in the Central and West Wards of Newark, she had some childhood friends who became gang members, but does not know any gang members outside of those neighborhoods. She suggests that her experience would enable her to identify gang members on the streets. Additionally, she claims that although she removed Facebook photos depicting gang imagery after her first application interview with the appointing authority in 2013, she disclosed information about those photographs during an interview for the current selection process. She argues that she should not be judged for photos she took from ages 16 through 18. The appellant also expresses concern that the appointing authority has routinely treated her unfairly during the selection process, noting that when she appeared for an interview in 2014, one

¹ The background investigation report notes that the appellant was previously rejected for employment in the Police Officer title by the appointing authority in 2014 on the basis of her affiliation with the Crips street gang.

background investigator, upon seeing the appellant, commented to another officer in a derogatory fashion that "she's back again."

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, maintains that the appellant was properly removed from the subject eligible list because she falsified material information in her Questionnaire and failed to complete her pre-employment processing. The appointing authority claims the appellant's false statements and attempts to deceive involved information about the appellant's affiliation with gang members and the March 2013 harassment charge in her record. With regard to her statements about gang affiliation, the appointing authority submits that the appellant answered "no" in response to a question which asked if she had "ever been, affiliated or associated with any street gang or street gang sets?" and listed her brother as the only person that she knew was involved in a street gang, but contradicts this on appeal by stating that "I do know a few individuals that belong to different gangs." The appointing authority adds that its background investigation revealed that the appellant had ties to several other known gang members, including the appellant's former boyfriend and the father of her best friend's child, which she did not list on her Questionnaire. It maintains that the appellant's affiliation with gang members is also evidenced by the Facebook photographs that show her displaying gang hand sign gestures, including images with known Bloods and Crips gang members. The appointing authority submits copies of the aforementioned photographs from the appellant's Facebook account. The appointing authority argues that the appellant is aware of the significance of flashing a gang sign because she is familiar with street gangs and suggests that her removal of those images from Facebook further evidences her intent to deceive the appointing authority about her associations with gang members. The appointing authority also maintains that the appellant falsified her criminal history in her Questionnaire by answering "no" in response to a question which asked if she had "ever been arrested for, or charged with a violation of the disorderly person's act or city ordinance?" despite having been charged with harassment in March 2013 for threatening another individual via phone and on social media. The appointing authority argues that the appellant's conduct, including her omissions and false statements, as well as her association with known gang members reflect poorly upon her ability to perform the duties assigned to individuals in the Police Officer title.

The appointing authority argues that the appellant's failure to complete pre-employment processing also supports the removal of her name from the subject eligible list. Specifically, it maintains that the appellant failed to provide bank account information, salary history and past employer contact information in her Questionnaire and she did not submit a credit report, as required. The appointing authority emphasizes that the Questionnaire clearly advises applicants that they may be removed from the eligible list if they do not properly complete it.

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:4-4.7(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. 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 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.

In this matter, a review of the record indicates that the appointing authority reasonably requested the removal of the appellant's name from the subject eligible list based on the appellant's falsification of her application concerning information about her associations with gang members. On her Questionnaire, the appellant answered "no" in response to a question which asked if she had "ever been, affiliated or associated with any street gang or street gang sets?" and listed her brother as the only person she knew that was involved in a street gang. However, the appellant's statement on appeal that she knows "a couple of gang members," including the father of her best friend's child, contradicts those responses. Additionally, the appointing authority submits images from the appellant's Facebook account that it contends show the appellant with known gang members and in which she displays hand gestures known to be Crips gang symbols. On appeal, the appellant does not dispute the claims that those images show her with known gang members and/or feature her displaying a gang sign hand gesture. Moreover, the appellant's selective disclosures about her affiliations with gang members and her removal of the above-referenced images from Facebook evidence an intent to deceive the appointing authority. The information that the appellant failed to disclose is considered material and should have been accurately indicated on her Questionnaire. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Police Officer, to ensure that her employment application is a complete and accurate depiction of her 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. Furthermore, 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. Her primary duty is to enforce and uphold the law. She carries a service revolver on her person and is constantly called upon to exercise tact, restraint and good judgment in her relationship with the public. She 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). Clearly, a failure to disclose material information about ties to gang members and attempts to deceive the appointing authority about such affiliations reflect poorly upon the appellant's ability to meet the high standards of conduct expected of a Police Officer. As such, the appointing authority's removal of the appellant's name from the subject eligible list on the basis of a falsified application was proper.

Additionally, the appellant's failure to complete pre-employment processing, specifically her failure to provide complete employment history and financial information, including a credit report, also supports her removal from the subject eligible list. In this regard, it is noted that the appointing authority has the authority and ability to require potential new hires to undergo pre-employment processing to ensure that the candidate is qualified for appointment. Such pre-employment processing may include any and all conditions necessary for an appointing authority to assess a candidate's qualifications. Further, this information is important as it serves the crucial function of demonstrating any significant differences between the candidates which may assist the appointing authority in the selection process. See *In the Matter of Laura C. Bonilla* (MSB, decided September 7, 2005); *In the Matter of Bruce C. Cooke* (MSB, decided May 8, 2001); *In the Matter of James Smith* (MSB, decided April 24, 2001). The appellant was required to provide a complete and accurate record of her background for review by the appointing authority as part of her pre-employment process and failed to do so. Such behavior is unacceptable for an individual seeking a position as a Police Officer. Accordingly, the appellant's falsification of her application concerning her gang affiliations and her failure to complete pre-employment processing provide sufficient bases to remove the appellant's name from the subject 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 8TH DAY OF FEBRUARY, 2017

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