

B-10

STATE OF NEW JERSEY

In the Matter of Jorge Miranda, Fire
Fighter (M2543M), Kearny

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-4392

List Removal Appeal

ISSUED: **MAR 15 2017** (SLK)

Jorge Miranda, represented by Marcia Mitolo, Esq., appeals his removal from the eligible list for Fire Fighter (M2543M), Kearny, on the basis of falsification of his pre-employment application.

By way of background, the appellant's name appeared on certification OL151144 that was issued to the appointing authority on September 17, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he falsified his application. Specifically, he did not disclose four juvenile complaints against him.

On appeal, the appellant claims that this is a matter of mistaken identity. He asserts that he has never been arrested, or otherwise detained as either a juvenile or an adult. The appellant indicates that he first learned that these four juvenile incidents from 1996 and 1997 were linked to his name when he received his notice of removal from the subject list. He highlights that he previously served as a County Correction Officer where he had undergone an extensive background check that did not reveal any juvenile incidents. The appellant states that he would attempt to gather the necessary documents to prove that the subject incidents linked to his name in the Family Automated Case Track System (FACTS) are a mistake.

In response, the appointing authority, represented by Robert J. Merryman, Esq., presents that the appellant admits that his FACTS records shows that he was charged with four juvenile offenses. Further, he does not provide any substantive evidence to contradict those records. The appointing authority highlights that the appellant has the burden of proof. It indicates that two of the incidents took place in Kearny and the Kearny Police confirmed that the juvenile arrested in 1996 with the

name Jorge F. Miranda is in fact the appellant. Additionally, the arrest records show the appellant's social security number and lists the same individual who he identified as his mother on his pre-employment application. Therefore, the appointing authority asserts that the appellant's falsification of his application and his continued denial of undisputed facts raises serious issues about his honesty and integrity. Consequently, it argues that it appropriately removed the appellant's name from the subject list.

In reply, the appellant certifies that he truthfully answered "no" when he indicated on his pre-employment application that he had never knowingly been the subject of a criminal complaint as a juvenile or an adult. He reiterates that prior to this matter, he was never made aware that these complaints were filed against him. The appellant emphasizes that he has never been questioned by law enforcement regarding any incident since 1996. The appellant's mother certifies that she was never notified that her son was ever arrested, detained or questioned by law enforcement or the subject of a criminal complaint. He indicates that as these files are over 20 years old, he has been advised that the files have been purged or destroyed. The appellant states that he has been advised by probation officers that it is possible that he was charged with juvenile offenses and those charges were dismissed without his knowledge such as when the person who files the complaint never pursues it or that a conference was held without him. Regardless, the appellant also argues that these dismissed charges do not meet the threshold for removal based on a criminal record.

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 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.

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.

It is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a municipal police department, when requested for purposes of making a hiring decision. However, *N.J.S.A.* 2A:4A-48 provides that a conviction for juvenile

delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. Accordingly, the disability arising under *N.J.A.C. 4A:4-4.7(a)4* as a result of having a criminal conviction has no applicability in the instant appeal.

Nevertheless, in this matter, a thorough review of the record indicates that the appellant's removal from the (M2543M) eligible list for Fire Fighter is warranted. There is more than sufficient evidence in the record to identify the appellant as having four juvenile incidents on his FACTS record. However, the appellant claims this is a case of mistaken identity. It is noted that two of the incidents took place in Kearny. The appointing authority submits an e-mail from Captain George King from the Kearny Police Department. Captain King states that the incident and arrest report from August 15, 1996 have birth dates which match the appellant's birth date. Additionally, the Arrest Report and Juvenile Custody Release Form are signed by Monica Gonzalez who lists herself as the mother of Jorge F. Miranda and his FACTS record shows Monica Gonzalez as the natural mother. As such, there is sufficient evidence to indicate that the appellant was the one charged with the juvenile offenses in question. The appellant has neither provided any documentation in support of his argument that the appointing authority may have misidentified him, nor provided any evidence that his juvenile criminal record was not accurate. Further, as the appellant's mother signed the Arrest Report and Juvenile Custody Release Form from Kearney, there is sufficient evidence that the appellant was, or should have been, aware of these charges.

The information that the appellant failed to disclose is considered material and should have been accurately indicated on his employment application. 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. The issue is not whether the appellant's juvenile record is sufficient for removal. Instead, the issue is the appellant's failure to originally disclose and continued failure to acknowledge that he has a juvenile record which calls into question his honesty and integrity, traits critical for the position as a Fire Fighter. Firefighters are not only entrusted with the duty to fight fire; they must also be able to work with the general public and other municipal employees, especially police officers, because the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship places at risk the citizens of the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police departments at a fire. *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998).

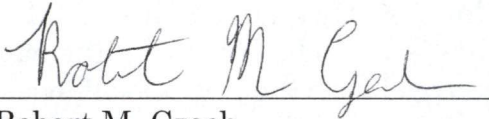
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Fire Fighter (M2543M) eligible list

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 9th DAY OF MARCH, 2017



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