



STATE OF NEW JERSEY

In the Matter of Lonnie Wiggins,
Police Officer (S9999U), Jersey City

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

CSC Docket No. 2020-1167

Reconsideration

ISSUED: JANUARY 31, 2020 (SLK)

Lonnie Wiggins requests reconsideration of the attached decision rendered on September 10, 2019, which denied his appeal to have his name restored to the eligible list for Police Officer (S9999U), Jersey City on the basis that he possessed an unsatisfactory background.

By way of background, the Civil Service Commission (Commission) denied the petitioner's original appeal of his removal from the list finding he had an unsatisfactory employment history as of the August 31, 2016 closing date based on his Department of Corrections Work History, which included a one-day suspension for a February 5, 2016 incident, an official written reprimand for a May 20, 2016 incident, a 30-day suspension for a May 23, 2016 incident, a three-day suspension for a June 3, 2016 incident, and a five-day suspension for a July 1, 2016 incident. Additionally, the Commission noted that his employment application indicated that his son resided with his mother, but his tax returns indicated that his son resided with him more than half the time based on his Head of Household status on his tax return. Therefore, at minimum, the Commission found that the petitioner made contradictory statements regarding his son's residence and may have committed tax fraud. The Commission noted that tax fraud and falsification of an employment application are grounds for removal from an eligible list.

In his request for reconsideration, the petitioner presents that this is the third time that he has been removed from the list for having an adverse background for a

Police Officer and he believes he has not been provided a fair chance to become a Police Officer. He requests that the Commission review the evidence concerning his prior disciplines, which he asserts indicates why he settled those matters rather than appeal them. The petitioner explains that he settled those disciplinary matters related to attendance and other infractions because he was told, "If I decided to appeal the charges it would hold up my transfer for months, and possibly effect my chances on leaving the department." He claims that if he had known that the settlements would have done more harm than good, he would have appealed his discipline and would have had strong cases based upon the Family and Medical Leave Act and department policy. The petitioner submits five separate cases where he argues that the Commission granted list removal appeals for Police Officer¹ candidates where the petitioners had backgrounds that were more adverse than his. He states that in those cases, the petitioners' judgment and character choices were much worse than his simple attendance issues and an insubordination violation for parking in a supervisors' parking lot. The petitioner highlights that he has not received any discipline since 2016 and there have been no issues since he was reassigned nearly four years ago. He asks that the Commission re-look at his character references from his current supervisors. The petitioner claims that he was unfairly labeled a bad guy because of a prior discrimination complaint that he filed, which led to a superior trying to destroy his career. He presents that this same individual wrote him a letter of recommendation two weeks prior to him filing the complaint.

Concerning the finding that he falsified his application, the Commission indicated that, at minimum, he made contradictory statements regarding his son's residence. He indicates that he always states that his son resides with his mother because that is the address he has used for him since birth. However, he argues that he can legally claim his son on his taxes if his son does not live with him, but stays with him more nights per year. However, the petitioner reiterates that he never claimed that his son lived with him. He claims that he provided proof on appeal that he did not commit tax fraud and he argues that the belief or possibility that tax fraud was committed is not a sufficient reason for his removal from the list. The petitioner submits a statement from his tax preparer that shows that the Internal Revenue Service (IRS) accepted his tax return and his preparer indicates that it was proper for the petitioner to claim a deduction for his son on his tax return since the mother released her claim for a deduction and the son lives with him for at least half of the time.

In response, the appointing authority asserts that the petitioner lacks candor because it believes that he is arguing that he is currently a Police Officer when he is a Correctional Police Officer. It contends that the difference is significant because Correctional Police Officers and Police Officers attend separate training academies and their respective certification with the Police Training Commission are separate. Further, the cases that the petitioner submits do not involve Police Officer candidates

¹ The appeals were for Correctional Police Officer positions and not Police Officer positions.

as the petitioner states, but instead involve Correctional Police Officer candidates. Moreover, the appointing authority argues that the petitioner has not met the standard for reconsideration under *N.J.A.C. 4A:2-1.6(b)*. Specifically, he submits letters of reference that are dated July 2019. The Commission's decision was in September 2019 and the petitioner has not submitted any explanation as to why these materials were not presented during his appeal. Regardless, as these letters do not address the petitioner's disciplinary and tax issues, they are not relevant. Additionally, his December 7, 2018 letter of reference was already considered during the initial appeal. Moreover, the November 12, 2019 letter from the petitioner's accountant does not change the outcome in this matter. The appointing authority emphasizes that the petitioner has not submitted any information that would have changed the Commission decision as he had a troubling disciplinary history with the Department of Corrections, including major discipline. The fact that he has not had any disciplinary issues within the past three years is of no consequence. The appointing authority argues that the petitioner has not submitted any new evidence on reconsideration that would have changed the Commission's decision nor did the Commission make a clear material error in its determination.

In reply, the petitioner presents that his title was changed to Correctional Police Officer after legislation was passed, which recognized that Correction Officers hold the same "Police Powers" as Police Officers as far as the ability to arrest and enforce State laws. Therefore, he argues that the cases that he presents are new evidence as these cases all involve titles which involved Police Officers. Additionally, he argues that his letter from his accountant, who is employed by the IRS, is new evidence. He presents that his accountant states that the petitioner did not commit tax fraud. The petitioner argues that since a certified tax professional, who is employed by the IRS, is stating that he did not commit tax fraud, the Commission made a clear material error when it found that tax fraud may have been committed.

In further response, the appointing authority presents that the petitioner's accountant's letter does not meet the criteria for new evidence that can be considered on reconsideration as he has not provided any explanation as to why he did not submit this evidence during his appeal. Regardless, even if the petitioner had submitted his accountant's letter on appeal, it would not have changed the outcome. The appointing authority notes that although the petitioner states that his accountant is employed by the IRS, his accountant's letter indicates that he the accountant/owner of Rock Solid Financial Services and there is nothing in this letter that confirms that he is an employee of the IRS. Further, merely because the IRS accepted the petitioner's filing of his tax return does not mean that the IRS concluded that his tax return was not fraudulent. Moreover, contrary to the petitioner's argument, he does not hold the title of Police Officer as Correctional Police Officer and Police Officer are two separate titles, with different duties as indicated in case law, and all the cases that he cites involve Correctional Police Officers and not Police Officers. Additionally,

it presents that none of the candidates in these cases have the same negative employment history as the petitioner.

In further reply, the petitioner indicates that he went to a certified tax preparer whose job is to submit tax returns to the IRS because all the information that he had submitted from the IRS website and letters from his son's mother and school director which explain their son's living arrangement, were not considered sufficient. He believes that the appointing authority is either trying to destroy his chances of becoming a municipal Police Officer or has some other personal issue with him as he has submitted multiple pieces of evidence which shows that he did not commit tax fraud. He reiterates his argument that the cases that he submits support his position that the Commission made a clear material error in its decision as those cases involved candidates who held job titles that had police powers.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the petitioner has not met the standard for reconsideration. Initially, it is noted that most of the petitioner's new evidence cannot be considered on reconsideration as this evidence was available, or could have been available, prior to the Commission's September 10, 2019 decision. Specifically, three of the five Commission decisions that the petitioner submits were decided prior to September 10, 2019.² Additionally, the petitioner submits a May 17, 2016 letter of recommendation from his superior who he filed a discrimination complaint against three weeks later, his June 21, 2016 discrimination complaint, the Department of Corrections' February 17, 2017 determination which found that the petitioner had not been discriminated against, and December 7, 2018, July 6 and July 11, 2019 letters of recommendation from Department of Corrections' superiors. Further, the petitioner has not adequately explained why he did not submit this available evidence at the time of the appeal. Additionally, the petitioner submits a November 12, 2019 letter from his tax preparer which states that he was entitled to claim his son on his tax return as the mother released her claim and the child stayed with the petitioner as much or more than the mother. However, as the petitioner was aware that tax fraud was one of the grounds for his removal during the appeal process, he has not adequately explained why he did not present a letter from his tax preparer prior to the September 10, 2019 decision.

² *In the Matter of Indigo Glover*, *In the Matter of Lorenzo Guanci* and *In the Matter of Zebdee Miller* were decided on July 31, 2019. *In the Matter of Sediya Webster* and *In the Matter of Louis Kishko* were decided on September 10, 2019.

Regardless, even if the petitioner's new evidence had been submitted during the appeal, it would not have changed the outcome of the case. The petitioner argues that his disciplines were unjust, he only settled these matters to facilitate his reassignment, and he would not have settled had he known the impact. However, these are the same arguments that he made on initial appeal and were rejected. As stated in the decision, "while the [petitioner] had the opportunity to defend himself against these disciplinary actions; instead, he chose to either accept or settle them." It was the petitioner's responsibility to understand the consequences of his settlement and now he needs to live with those consequences. The Commission will not relitigate his settled matter. With respect to the cases that the petitioner submits, while the Commission acknowledges that Correctional Police Officers and municipal Police Officers are not the same, these are both law enforcement titles and are both subject to the same high standards. Therefore, list removal cases involving Correctional Police Officers could potentially have comparative value for municipal Police Officer candidates. However, in this matter, the cases that the petitioner submits do not support his restoration to the list. While he focuses on the specific behaviors of the Correctional Police Officer candidates and he believes that his behavior was less adverse, the petitioner misses the key rationale for the Commission restoring those candidate's names to their respective lists. Specifically, in those cases, it had been at least five years prior to the relevant closing dates that candidates had engaged in the behavior that the appointing authorities presented as grounds for removal. However, the Commission found that sufficient time had passed for those candidates to have demonstrated rehabilitation. In this matter, the petitioner's last suspension was for a July 1, 2016 incident, which was only two months prior to the August 31, 2016 closing date. Therefore, there was insufficient time for him to demonstrate rehabilitation. The petitioner's letters of recommendation and his lack of disciplinary issues after July 1, 2016³, do not change the fact that he had an adverse employment history as of the August 31, 2016 closing date based on four minor disciplines and the one major discipline that he received in 2016.

Concerning the petitioner's tax return, the Commission found that he made contradictory statements regarding the residency of his son. On his employment application, he indicated that his son lived with his mother. However, on the petitioner's tax return, he claimed Head of Household status, which indicates that his son lived with him. Pursuant to *N.J.A.C. 4A:4-2.11(b)*, a residence means a single legal residence. See e.g., *In the Matter of Roslyn L. Lightfoot* (MSB, decided January 12, 1993). Therefore, these contradictory statements were a legitimate cause of concern for the appointing authority that the petitioner may have committed tax fraud. His explanation that he considers that his son lives with his mother as he has always stated this since this has been his son's address since birth, but spends most nights with him, is not persuasive as the fact that he always gives an inaccurate

³ Personnel records indicate that the petitioner also received a Preliminary Notice of Disciplinary Action on July 17, 2017 for unauthorized absences. However, personnel records do not indicate the determination in this matter.

answer is not justification for a misleading response. 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. As the petitioner's answer was, at minimum, misleading, even if there was no intent to deceive, the petitioner should have indicated that his son spends at least 50 percent of his time living with him if that is the case. Further, a candidate is responsible for the accuracy of his application. See *In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Moreover, the fact that the IRS accepted the receipt of his tax return or that his tax preparer states that the petitioner was entitled to claim his son on his tax return, does not negate his contradictory statements. Additionally, contrary to the petitioner's beliefs, misleading statements which indicate the potential for tax fraud are a sufficient basis for an appointing authority to remove a candidate based on falsification. It need not actually prove that tax fraud was committed. The Commission also notes that even on reconsideration, the petitioner has made, at minimum, a misleading statement. He states that his tax preparer works for the IRS. Presumably this statement was made to give greater weight to his tax preparer's statements to sway the Commission's decision. However, the evidence indicates that his tax preparer is an independent accountant/owner who is not affiliated with the IRS. This statement also raises concern about the petitioner's integrity and judgment to be a Police Officer. Regardless, even if the Commission had not found that the petitioner falsified his application, as indicated above, the petitioner's adverse employment history as of the closing date was sufficient for his removal.

ORDER

Therefore, it is ordered that this request for reconsideration 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 29th DAY OF JANUARY, 2020



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Attachment



STATE OF NEW JERSEY

In the Matter of Lonnie Wiggins,
Police Officer (S9999U), Jersey City

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2019-2956

List Removal Appeal

ISSUED: SEPTEMBER 12, 2019 (SLK)

Lonnie Wiggins appeals his removal from the eligible list for Police Officer (S9999U), Jersey City on the basis that he possessed an unsatisfactory background.

The appellant took the open competitive examination for Police Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that he had an unsatisfactory background. The background report submitted to the Division of Agency Services also indicated that the appellant had an unsatisfactory employment history while working for the Department of Corrections and he committed multiple instances of tax fraud.

On appeal, the appellant highlights that he has worked as a State Correctional Police Officer for six years. He asserts that if his background was adverse to being a Police Officer, he would have been terminated from his current employment. The appellant submits a memorandum from the Chief of his department that indicates he would recommend the appellant for appointment as a Police Officer. He states that he has not been given specific reasons for his removal.

In response, the appointing authority submits its background report. The report indicates that in 2015, the appellant was a candidate for Police Officer with Jersey City from a prior certification. That background investigation indicated that the appellant was initially terminated prior to completing his working test period as

a State Correctional Police Officer for unapproved absences in 2013 and 2014. After a lawsuit that the appellant filed, the parties reached a settlement where it was agreed that the appellant could return to work, but he received no compensation. However, during the background investigation in 2015, the appellant had not returned to work. Additionally, at the same time, the appellant had an open criminal case against him for a July 2, 2015 incident in East Orange where he was accused of threatening to kill the boyfriend of a woman if he did not resolve the issues between the boyfriend's girlfriend and the appellant's girlfriend. The case was dismissed, but the appellant was unable to provide proof prior to the certification disposition. Additionally, the appointing authority found some inconsistencies in the appellant's residence during the 2015 investigation regarding whether he lived in Jersey City or in East Orange with the mother of his son.

The appellant was also a candidate to be a Jersey City Police Officer in 2016 based on a subsequent certification. The background investigation in 2016 indicated that the appellant was disciplined during his employment with New Jersey State Prison. It presents a December 2015 incident involving parking his personal vehicle in the parking lot for the Custody Supervisor, which led to a one-day suspension for being highly insubordinate and disrespectful to his supervisors. Additionally, there was a May 2016 incident, which led to him being charged with insubordination, conduct unbecoming a public employee, leaving a work area without permission, and continued use of obscene language. This led to the appellant receiving a 30-day suspension, which is major discipline. Additionally, he called out sick after exhausting all of his sick time on multiple occasions, which led to additional three and five-day suspensions. An Internal Affairs Major for the Department of Corrections indicated during the investigation that the appellant had a history of chronic or excessive absenteeism or lateness, that he "does not play well with others" and no one wants to work with him. This Major stated that they tried assigning him different Sergeants to mentor him, but all have given up. Therefore, the Major could not recommend him for employment as a Police Officer. Consequently, in August 2016, Jersey City removed his name from the list for an unsatisfactory employment history.

Concerning the current certification, the appointing authority contends that the appellant committed tax fraud in 2015, 2016, and 2017. It presents that the appellant indicated that he lives in Jersey City while his child lives in East Orange with his mother. However, on his federal tax returns, he claimed his son as his dependent and that he was the Head of Household, which led to him receiving tax refunds. The appointing authority states that the appellant clearly committed tax fraud by knowingly reporting an ineligible dependent on his tax returns, which the Civil Service Commission (Commission) has held is grounds for removal.

In reply, regarding the 2015 background investigation, the appellant explains that he was terminated during his working test period with the Department of Corrections while he was out on worker's compensation due to an injury sustained at work. Thereafter, he sued for wrongful termination and agreed to a settlement where he could return to work. However, he did not pursue back pay or legal fees as he did not want to hold up the settlement so that he continue the process of obtaining employment as a Jersey City Police Officer. Concerning the charge where he was accused of threatening to murder an individual, he states that all of the allegations were proven untrue and the case was dismissed. With regards to questions about his residency in Jersey City, he states that, while he did spend nights at his girlfriend's house in East Orange, he has always lived in Jersey City and a proper investigation would have confirmed this.

With respect to the 2016 background investigation, the appellant explains that New Jersey State Prison was a hostile work environment due to retaliation for discrimination complaints that he filed. This led to him requesting to be reassigned to a different institution. Concerning the parking incident, he believes he was retaliated against and he was charged with a one-day suspension. He believes he should have only received a written reprimand for a first offense under administration policy. With respect to the eight days he was suspended for exhausting leave time, all of his leave was approved as FMLA/FLA leave entitlements; however, disciplinary charges were still pursued against him. In reference to the major discipline, he explains the situation and denies the charges. However, he indicates that he settled and accepted the major discipline so that he could receive a reassignment to another institution.

Concerning the 2018 background investigation, the appellant highlights that he has not had any disciplinary issues in the three years since his reassignment and has provided a current letter of recommendation. He believes that this shows his true character. The appellant claims that he was legally allowed under IRS rules to file as Head of Household and claim his son as a dependent. In order to qualify, the child only needs to spend more nights with him than the other parent and does not have to physically reside with him.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)7*, allows the Commission to remove an eligible's name from an eligible list for having a prior employment history which relates adversely to the title.

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, the appointing authority had valid reasons to remove the appellant's name from the list. A review of the appellant's Department of Corrections Work History indicated that he received a one-day suspension for a February 5, 2016 incident, an official written reprimand for a May 20, 2016 incident, a 30-day suspension for a May 23, 2016 incident, a three-day suspension for June 3, 2016 incident, and a five-day suspension for a July 1, 2016 incident. The appellant contends that these disciplines were unwarranted and were charged against him in retaliation for filing discrimination complaints. Additionally, he states the he only settled these matters to facilitate his reassignment to a new facility. Further, he presents that has not received any discipline since he was reassigned in August 2016 and argues this is evidence that his prior disciplines were unjust and only due to him previously working in a hostile environment. However, while the appellant had the opportunity to defend himself against these disciplinary actions; instead, he chose to either accept or settle them. As such, the record is clear that the appellant had an unsatisfactory employment history as of the August 31, 2016 closing date. Moreover, the fact that the appellant has not received any subsequent discipline after his reassignment does not prove this his disciplinary history was not adverse as of the closing date.

Concerning the allegation that the appellant committed tax fraud, the appellant submits a statement from the mother of their son, which indicates that their child lives typically lives with the appellant four nights per week and with her three nights per week, although it can vary. However, on the appellant's 2018 employment application, under question 28, the appellant indicated that his son resides with his mother in East Orange. Additionally, in response to being questioned about the appellant's residence, he signed a November 21, 2018 statement indicating that, "My son lives with his Mother currently since birth." As indicated in the instructions on a tax return (<https://www.irs.gov/pub/irs-pdf/i1040gi.pdf>), in order for appellant to have claimed Head of Household status on his federal tax return, the appellant must have paid over half the cost of keeping up a home in which he lived in and his son lived in for more than half of the year. Therefore, as the appellant's statements on his application indicate that his son resided with his mother, but his tax returns indicate that his son resided with him more than half the time, at minimum, the appellant made contradictory statements regarding his son's residence and may have committed tax fraud. It is noted that tax fraud is grounds for removal. *See In the Matter of Daniel Urban* (CSC, decided October 3, 2018). Moreover,

falsification of an employment application is also grounds for removal pursuant to *N.J.A.C. 4A:4-6.1(a)6*.

As such, the appellant's background indicates that he lacks the judgment and character to be a Police Officer. In this regard, it is recognized that a Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. 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 Office is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He 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).

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 Police Officer (S9999U), Jersey City eligible list.

ORDER

Therefore, it is ordered that his 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 10th DAY OF SEPTEMBER, 2019



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