

B-17



STATE OF NEW JERSEY  
DEPARTMENT OF PERSONNEL

FINAL ADMINISTRATIVE ACTION  
OF THE  
MERIT SYSTEM BOARD

In the Matter of Salvatore Montanti,  
Fire Fighter (M2578M), West Orange

CSC Docket No. 2014-2351

List Removal Appeal

ISSUED: **OCT 06 2014** (JET)

Salvatore Montanti, represented by William D. Sayers, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Fire Fighter (M2578M), West Orange, eligible list on the basis of falsification of the employment application.

The appellant took the open competitive examination for Fire Fighter (M2578M), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on November 2, 2012. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of falsification of the employment application. Specifically, the appointing authority asserted that the appellant failed to disclose on the employment application that he was charged on April 19, 2008 with Offering/Serving alcohol to a minor in violation of *N.J.S.A. 2C:33-17*; Possession of Marijuana in violation of *N.J.S.A. 2C:35-10A*; and Possession of Drug Paraphernalia in violation of *N.J.S.A. 2C:36-2*. Further, the appellant provided conflicting information and/or failed to answer questions 50, 63, 87, 97, 103, 104, 111, 112, and 113 on the employment application. Moreover, the appellant failed to list multiple moving violations listed on his driver's abstract. On appeal to CPM, the appellant asserted that his name should be restored to the eligible list since he did not falsify the employment application. CPM upheld the appointing authority's decision to remove the appellant's name from the subject eligible list.

On appeal, the appellant maintains that his name should be restored to the eligible list. Specifically, the appellant asserts that he did not intentionally falsify the employment application or misstate any material facts. Further, the appellant contends that he did not falsify any answers that were provided to the Deputy Fire Chief during pre-employment processing. In this regard, he did not fail to disclose the 2008 conditional discharge or any other information to the Deputy Fire Chief. The appellant explains that the information he disclosed during the interview with the Deputy Fire Chief also corrected any omissions on the employment application. In addition, the appellant states that he did not list the 2008 arrest on his application because he believed that the matter was dismissed and did not exist as a result of the conditional discharge. The appellant adds that he simply forgot about the moving violations on the employment application, and he acknowledged the 2007 DUI charges and the occasional use of Marijuana. The appellant maintains that he did not provide any contradictory information regarding his employment history. In this regard, he indicated on the employment application that he "quit his job" which is not evidence that he was asked to resign. The appellant explains that he indicated that he quit his job because his hours were reduced. Moreover, the appellant asserts that the reasons provided by the appointing authority for his removal are redundant and without merit.

Despite being provided the opportunity to supplement the record, the appointing authority did not submit any additional documentation for review.

## CONCLUSION

*N.J.A.C. 4A:4-6(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 the eligible list was in error. *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 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.

In the instant matter, the appointing authority argues that the appellant did not disclose the April 19, 2008 charges of Offering/Serving alcohol to a minor in violation of *N.J.S.A. 2C:33-17*, Possession of Marijuana in violation of *N.J.S.A. 2C:35-10A*, and Possession of Drug Paraphernalia in violation of *N.J.S.A. 2C:36-2* on his employment application. Further, the appointing authority argues that the appellant provided conflicting information and/or failed to answer questions 50, 63, 87, 97, 103, 104, 111, 112, and 113 on the employment application. The appointing authority also argues that the appellant failed to list multiple moving violations listed on his driver's abstract. The appellant contends that he did not list such information because he believed the April 19, 2008 charges did not exist. The appellant explains that he simply forgot about the moving violations

listed on his driver's abstract. Moreover, he argues that there was no conflicting information on the employment application, and he explained any omissions to the Deputy Fire Chief at the time of his interview.

The employment application that was submitted indicates "any candidate who makes a false statement, purposeful omission, misrepresentation or concealment of a material fact, or who practices, attempts to practice any deception or fraud in securing eligibility for appointment, or any candidate who provides answers contrary to official records, will be rejected from the application process and will be disqualified for eligibility." In response to question 50 on the employment application, "Have you ever been detained, investigated, arrested or charged by any law enforcement officer, agency, or citizen as an adult for any crime, disorderly person offense, petty disorderly person offense, administrative code, or violation of local ordinance," the appellant failed to list the April 2008 charges of Offering/Serving alcohol to a minor, Possession of Marijuana, and Possession of Drug Paraphernalia. In response to question 63 on the employment application, "Have you ever received a moving violation summons or ticket," the appellant initially checked "Yes," and then changed his answer to "No" and indicated "N/A." In response to question 103 on the employment application, "Have you ever smoked, experimented with, tasted, ingested, used, injected, sniffed, etc., [Marijuana], the appellant did not explain his alleged use of narcotics that led to his arrest in April 2008. In response to question 104 on the employment application, "have you ever been investigated, arrested or charged with any type of drug/narcotic related violation," the appellant initially checked "No" and then changed his answer to "Yes" and failed to explain his answer. In response to questions 111, 112, and 113 on the employment application, "Have you ever been arrested/charged for committing any alcohol related violations," "Have you ever been issued a civil/criminal citation for any type of alcohol related violation," and "Have you ever purchased alcohol for a minor," the appellant did not disclose the April 2008 charge of Offering/Serving alcohol to a minor.

Additionally, in response to question 87 on the employment application, "Have you ever been fired, terminated, asked to leave, laid off, or resign or quit under questionable circumstances," the appellant marked "Yes" and explained "I have had to quit due to my hours being cut . . . [w]ork has slowed to a standstill a couple of times which has forced me to find other jobs." In response to question 97 on the employment application, "have you ever been discharged, terminated, furloughed, laid off, or asked to resign from any employment," the appellant answered "No."

It is clear that the appellant did not correctly complete his employment application for the position. It must be emphasized that it is incumbent upon an applicant to ensure that his employment application is a complete and accurate depiction of his 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 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 information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his employment application. The appellant's failure to disclose the information is indicative of his questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Fire Fighter. In this case, the appellant's omissions are sufficient cause to remove his name from the list. The appellant's contention that he believed the April 2008 charges did not exist as a result of a conditional discharge and that he simply forgot about the moving violations listed on his driver's abstract are not persuasive. Further, the information provided regarding the appellant's employment history appears to be contradictory. Moreover, the appellant's argument that he disclosed the information to the Deputy Fire Chief is not persuasive. In this case, the appellant's omissions are sufficient cause to remove his name from the subject eligible list. An applicant must be held accountable for the accuracy of the information submitted on an application for employment and risks omitting or forgetting any information at his or her peril. *See In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991) (ALJ returned a Fire Fighter applicant to an eligible list on the basis that the applicant did not falsify the application but rather could not recall all the information. The ALJ's conclusion was rejected and it was determined that an honest mistake is not an allowable excuse for omitting relevant information from an application). Further, the type of omission presented is clearly significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Moreover, it was still the appellant's burden to provide an employment application that was accurate and complete. Therefore, there is sufficient basis to remove the appellant's name from the eligible list.

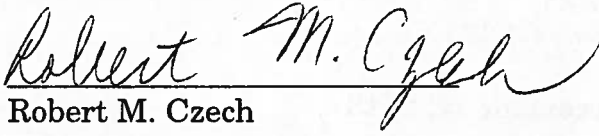
Accordingly, given the position at issue and in consideration of the totality of the evidence in the record, the appointing authority has presented a sufficient basis to remove the appellant's name from the eligible list for Fire Fighter (M2578M), West Orange.

### 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 1<sup>st</sup> DAY OF OCTOBER, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
& Regulatory Affairs  
Department of Personnel  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: Salvatore M. Montanti  
William D. Sayers, Esq.  
John K. Sayers  
Kenneth Connolly  
Joseph Gambino



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION

DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
Chair/Chief Executive Officer

Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

December 31, 2013

Salvatore M. Montanti

**Title:** Fire Fighter  
**Symbol:** M2578M  
**Jurisdiction:** West Orange  
**Certification Number:** OL121458  
**Certification Date:** 11/02/12

**Initial Determination:** Removal – Falsification of application

This is in response to your letter, appealing the removal of your name from the above eligible list. You requested a copy of the documentation the Appointing Authority used to support the removal. On July 15, 2013, the material was sent to you and you were given twenty (20) days to provide additional arguments. To date, you have not submitted any additional information. Therefore, this determination is based on the documentation already submitted.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. N.J.A.C. 4A:4-4.7(a)11*, which permits the removal of an eligible's name from an employment list for other valid reasons as determined by the Commissioner such as false statement of material fact.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.


Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Salvatore M. Montanti  
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Henry Maurer, Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Director,

A handwritten signature in cursive script, appearing to read "Barbara Bickel".

Barbara Bickel  
Human Resource Consultant

c: John Sayers – Business Administrator  
Township of West Orange  
66 Main Street  
West Orange, NJ 07052

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