

B-11



STATE OF NEW JERSEY

In the Matter of Ronnie Freire,
Correction Officer Recruit (S9988R),
Department of Corrections.

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2644

List Removal Appeal

ISSUED: OCT 24 2014 (JET)

Ronnie Freire 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 Correction Officer Recruit (S9988R), Department of Corrections eligible list on the basis of falsification of the employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on May 23, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list 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 with Defiant Trespasser on October 16, 1998 in violation of *N.J.S.A. 2C:18-3B*. The appellant appealed the matter to CPM, asserting, among other things, that his name should be restored to the eligible list. CPM determined that the appointing authority had presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal, the appellant asserts that he was a juvenile when he was charged with Defiant Trespasser. Further, the appellant contends that the reason he did not list the charges on his employment application was because he forgot that they existed. The appellant apologizes for not listing the information on the employment

application and he provides a copy of the police report from the incident. Moreover, he requests that his name be restored to the eligible list.

In response, the appointing authority maintains that the appellant's name should be removed from the eligible list. Specifically, the appointing authority asserts that the appellant did not indicate that he was charged with Defiant Trespasser in response to questions 46 and 51 on the employment application. The appointing authority adds that appellant was asked to provide a complete employment application in order to assist it in the decision making process for appointment as a Correction Officer Recruit. Moreover, the appointing authority states that the application clearly indicates that the appellant could be removed from the eligible list for failure to properly complete the employment application.

CONCLUSION

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. *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 that he was charged with Defiant Trespasser. The appellant argues that the charges were dismissed, and that he merely omitted the information from the employment application. It is clear that the appellant did not correctly complete his employment application for the position. However, it must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correction Officer Recruit, 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 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. 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) (An honest mistake is not an allowable excuse for omitting relevant information from an application).

In this case, the appellant's omissions are sufficient cause to remove his name from the eligible list. The appellant's contention that the charges were dismissed and that he merely omitted the information is unpersuasive since it is clear that he failed to disclose information in his background in response to the questions in the employment application. In this regard, in response to question 46 on the employment application, "Have you ever been arrested, indicted, charged with or convicted or a criminal or disorderly persons offense in this State or any other jurisdiction," the appellant checked "Yes" and indicated "I believe it was back in 2001, I was 20 years old, and had gotten a misdemeanor charge, went to court [paid] the ticket, and that was all. Then it expunged less than one year later." However, this is different incident as it was three years after the 1998 charge of Defiant Trespasser that he failed to include on his application. Further, in response to question 51 on the employment application, "Have you ever had any police contact, been taken into custody, or charged with juvenile delinquency," the appellant answered "No." Moreover, the appellant's explanation that he forgot about the charges is not sufficient to explain why he did not disclose such information on his employment application. The fact that the appellant was a minor at the time of the incident did not excuse him from the requirement of listing the charges on the employment application. In this regard, the arrest history section on page 17 of the employment application clearly indicates that the word "arrest" includes any "detaining, holding, or taking into custody by police or any other law enforcement agency" in this or any other State or foreign country whether adult or juvenile. 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.

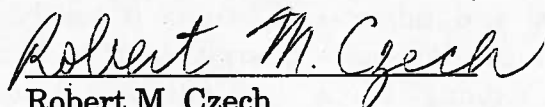
The information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his employment application. The appellant's failure to disclose the information is indicative of his questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correction Officer Recruit. In this regard, the Commission notes that a Correction Officer Recruit is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also *In re Phillips*, 117 N.J. 567 (1990). The public expects prison guards to present a personal background that exhibits respect for the law and rules. Therefore, there is sufficient basis to remove the appellant's name from the 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 22nd DAY OF OCTOBER, 2014**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

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Civil Service Commission
Written Record Appeals Unit
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**c: Ronnie Freire
Jennifer Rodriguez
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STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 313
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Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

Received

MAY 6 2014

By CSC/SLO

April 17, 2014

Ronnie Freire

Title: Correction Officer Recruit

Symbol: S9988R

Jurisdiction: Department of Corrections

Certification Number: JU13D01

Certification Date: 05/23/13

Initial Determination: Removal – Falsification of Statements

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

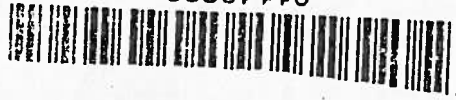
The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a) 6, where an individual has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process permits the removal of an eligible candidate's name from the eligible list.

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 & Regulatory Affairs (ARA) 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 ARA. 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.

Ronnie Freire
Page 2



Address all appeals to:

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Trenton, NJ 08625-0312

Sincerely,

Tonjua Wilson
Human Resource Consultant
State Certification Unit

For Joe M. Hill Jr. Assistant Director
Division of Classification & Personnel Management

C James J. Mulholland, Director
File