

CSC
B-14



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Joseph Gonzalez,
Correction Officer Recruit (S9988R),
Department of Corrections

List Removal

CSC Docket No. 2014-2904

ISSUED: **NOV 19 2014** (HS)

Joseph Gonzalez 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 his pre-employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), which had a closing date of January 2013, achieved a passing score and was ranked as a veteran on the subsequent eligible list. The eligible list promulgated on May 23, 2013 and expires on May 22, 2015. The appellant's name was certified by the appointing authority on May 23, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he falsified his pre-employment application. Specifically, the appointing authority asserted that the appellant failed to disclose on his application that a temporary restraining order had been entered against him on August 15, 2003 and that a final restraining order was entered on August 21, 2003. The appointing authority also asserted that the appellant lacked the requirements for the position in that the above noted final restraining order rendered him ineligible to qualify to handle a weapon. The appellant appealed to CPM. CPM found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant states that in 2003, he was in a relationship with J.M. until she filed a restraining order against him based on "false accusations." The appellant states that he appeared in court and understood that he was not to have contact with J.M. He states that he then spent nine years in the Marine Corps. The appellant argues that he answered "No" in response to a question on the employment application regarding active restraining orders because he assumed that the restraining order entered more than 10 years earlier was no longer active. He avers that he honestly thought that the restraining order was temporary and no longer effective. He contends that he would never intentionally falsify information. The appellant states that after he filled out the application, it was brought to his attention that the restraining order entered in 2003 remained active. He argues that he has since been truthful on other job applications and also successfully moved to vacate the final restraining order effective February 18, 2014.

In response, the appointing authority asserts that the employment application provides clear instructions as to what information must be disclosed and asks questions related to any type of adverse interaction with law enforcement regardless of the outcome of the interactions. It also states that the application covers domestic violence incidents. Specifically, the appointing authority maintains that in response to question 54, "Have you ever been a plaintiff, a defendant or involved in any act of domestic violence in this or any other state?" the appellant answered "No" and failed to disclose the associated restraining order information. Question 54 required the applicant to disclose all temporary and final restraining orders, whether as a plaintiff or as a defendant. It is noted that instructions on page 18 of the application state that the applicant must disclose, among other types of matters, incidences of domestic violence regardless of the outcome. The instructions further state: "This includes temporary restraining orders (active or dismissed) and final restraining orders (active or dismissed)." The appellant provided no information in the chart following these instructions. In support, the appointing authority submits a copy of the appellant's application and documentation from the Domestic Violence Central Registry. The Domestic Violence Central Registry documentation indicates that a temporary restraining order was entered against the appellant on August 15, 2003; a final restraining order was entered against the appellant on August 21, 2003; the final restraining order was dismissed on February 18, 2014; and J.M. was the "Victim." The appointing authority argues that the appellant admits his awareness of the August 2003 restraining orders on appeal. Furthermore, the appointing authority contends that the dismissal of the August 2003 final restraining order after his removal from the subject eligible list does not negate the fact that the appellant was still required to disclose the information on the application. Finally, the appointing authority reiterates that the appellant lacked the qualifications for the subject position since the final restraining order made him ineligible to carry a weapon.

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:4-6.3(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 name from an eligible list was in error.

In the instant matter, the appointing authority argues that although restraining orders were entered against the appellant in August 2003, he did not disclose these orders on his application. In support, the appointing authority provides documentation from the Domestic Violence Central Registry indicating that a temporary restraining order and a final restraining order were entered against the appellant in August 2003. Although the appellant claims that he did not disclose the information because he assumed that the restraining order was no longer active, that argument is not sufficient to restore his name to the eligible list. In this regard, question 54 asked whether the applicant had *ever* been a plaintiff, a defendant or involved in any act of domestic violence and requested the applicant to indicate temporary and final restraining orders, whether as a plaintiff or as a defendant. Moreover, instructions on page 18 of the application clearly required disclosure of all temporary and final restraining orders, whether active or dismissed. It is clear that the appellant failed to disclose the requested information on his application. 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 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 failed to disclose this information on his application. Further, the application clearly instructed applicants as to the information to be disclosed including temporary and final restraining orders, whether active or dismissed and whether as a plaintiff or as a defendant. 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. Indeed, an appointing authority's assessment of a prospective employee could be influenced by such charges, especially for a position in law enforcement. Therefore, the information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his 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 the 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.

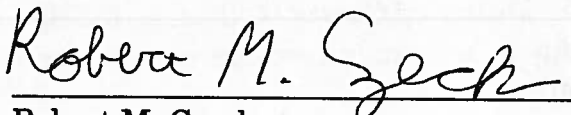
Finally, since the Commission has found that the falsification of the appellant's application was sufficient to support the removal of his name from the subject eligible list, it is unnecessary to determine whether his name could be removed on the basis that he lacked the requirements for the position.

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 19TH DAY OF NOVEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, NJ 08625-0312**

Attachment

- c. **Joseph Gonzalez
James J. Mulholland
Kenneth Connolly**



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

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

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

May 2, 2014

Joseph Gonzalez

Title: Correction Officer Recruit
Symbol: S9988R
Jurisdiction: NJ Dept. of Corrections
Certification Number: JU13D01
Certification Date: 5/23/13

Initial Determination: M2 - Remove – Falsification of application

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. N.J.A.C. 4A:4-6.1(a)6*, which permits the removal or bypass of an eligible candidate's name from the eligible list for making a false statement of a material fact, or attempted deception or fraud in any part of the selection or appointment process.

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 (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. Address all appeals to: Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Written Record Appeals Unit, PO Box 312, Trenton, NJ 08625-0312.

Sincerely,

Valerie Stutesman, IPMA-CP
Leader/Manager

c: Jennifer Rodriguez, NJ Department of Corrections