

CSC
B-6



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jacob R. Miller,
Correction Officer Recruit (S9988R),
Department of Corrections

List Removal

CSC Docket No. 2014-2033

ISSUED: **SEP 04 2014** (HS)

Jacob R. Miller, represented by Stephen J. Wenger, 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 Correction Officer Recruit (S9988R), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

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 non-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 due to an unsatisfactory criminal record. The appointing authority also asserted that the appellant had falsified his application. Specifically, the appointing authority asserted that the appellant failed to disclose on his application that in 2006, he was charged with Criminal Mischief of a Research Facility, third degree, in violation of *N.J.S.A. 2C:17-3b(3)* and Theft by Unlawful Taking, a disorderly persons offense, in violation of *N.J.S.A. 2C:20-3*. 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 initially notes that he was charged with an act of juvenile delinquency, which is not a crime, and that the charges were dismissed after he satisfactorily completed a juvenile diversionary program. With respect to the claim of falsification, the appellant argues that the decision to remove him because he did not disclose the incidents in question is not warranted. The appellant states that he obtained the relevant records from the police department and reviewed his background application. He emphasizes that he was 13 years old at the time of the incidents in question, all of which "involved" his brother, and that his level of understanding of the subsequent proceedings would not have been great in light of his age. Regarding the first incident on April 21, 2006, which his brother "took responsibility for," the appellant argues that he was never arrested "from the perspective of a 13 year old." Although he notes that he was charged on a juvenile petition, he argues that it may not have been clear to him that he was arrested since he was never handcuffed, transported, fingerprinted or photographed. He notes that the complaint may have been provided to his mother but that he was not personally served with a copy. Regarding the second incident on June 26, 2006, the appellant asserts that no complaints were signed and that the "normal trappings" of an arrest never occurred. Although the appellant notes that his mother "participated" in a stationhouse adjustment, he argues that he would not have considered this to be an arrest as a 13 year old juvenile nor should it be considered an arrest. Regarding the last incident on November 11, 2006, where a bicycle was allegedly stolen, the appellant argues that he was never arrested and was not personally served with a complaint. He states that he is unaware of the outcome of this matter and claims that he has never been to court or participated in any diversionary program. Based on the foregoing, the appellant argues that it is clear that a 13 year old would not understand if there had been an arrest or diversionary program. With respect to the employment application's definition of "arrest" as including any "detaining, holding or taking into custody by police or any other law enforcement agency," the appellant claims that an "arrest" within that definition never occurred and that he could have honestly answered any question requiring him to disclose an arrest in the negative. While the appellant concedes that the definitions for "charge" and "offense" include juvenile matters, he argues that it is not clear that he ever understood that he had been "charged" with anything. He further claims that removal is a harsh outcome for a mistake made when he was 13 years old and not fully aware of the consequences of his actions. Finally, the appellant requests a hearing.

In response, the appointing authority asserts that the employment application asks questions related to any type of adverse interaction with law enforcement regardless of the outcome of the interactions and that terms were clearly defined. It also states that the application covered questions related to expunged records, conditional discharges, juvenile delinquency, domestic violence incidents and disorderly persons offenses. Specifically, the appointing authority

maintains that in response to question 46,¹ "Have you ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or any other jurisdiction?" the appellant answered "No." The appointing authority adds that in response to question 51, "Have you ever had any police contact, been taken into custody, or charged with juvenile delinquency?" the appellant answered "No" even though he had police contact in his background report and had been taken into custody before. Additionally, the appellant did not list any charges on the chart following question 46. In support, the appointing authority submits a copy of the appellant's application and documentation from the Family Automated Case Tracking System (FACTS). The FACTS documentation indicates that the appellant, as a juvenile, was charged with Criminal Mischief of a Research Facility and Theft by Unlawful Taking in 2006 and that both charges were dismissed in 2007. The application defines "Arrest" to include any "detaining, holding, or taking into custody by police or any other law enforcement agency . . . whether adult or juvenile . . . regardless if discharged under any diversion program or dismissed." The application also defines "Charge" to include any "indictment, complaint, summons, and information or other notice of the alleged commission of any offense . . . even if it did not result in your physical arrest." The appointing authority notes that the appellant indicates that he was able to obtain the relevant records. It further contends that the application required the appellant to provide the court disposition paperwork related to any charges, and his failure to include that paperwork constituted a further falsification of the application.

CONCLUSION

Initially, the appellant requests a hearing in this matter. List removal appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6(b)*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

N.J.S.A. 11A:4-11 and *N.J.A.C. 4A:4-4.7(a)4* provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;

¹ Although the appointing authority refers to question 43, it is evident that it intended to refer to question 46. Question 43 is unrelated to this matter since it asks whether the candidate has ever been withdrawn from the selection process of any police department or agency.

- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A. 11A:4-11*. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

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(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 the appellant was charged with Criminal Mischief of a Research Facility and Theft by Unlawful Taking in 2006, he did not list those charges on his application. In support, the appointing authority provides documentation from FACTS indicating that the appellant, as a juvenile, was charged with Criminal Mischief of a Research Facility and Theft by Unlawful Taking in 2006. Although the appellant claims that as a 13 year old, he lacked an understanding of the related proceedings to explain why he did not list the charges on his application, that argument is not sufficient to restore his name to the eligible list. In this regard, it is clear that the appellant was charged with Criminal Mischief of a Research Facility and Theft by Unlawful Taking in 2006, and that he failed to disclose that information on his employment application. Moreover, the appellant's argument is not persuasive given that he was involved in three incidents over a short period of time where he acknowledges that there was some type of interaction with law enforcement. Moreover, the last incident occurred less than seven years before the closing date of the subject examination. Furthermore, although the appellant claims that he should not be penalized for a "mistake" he made when he was 13 years old, he provides no description of the events at issue that would dispute the seriousness of the charges

and/or incidents at issue.² 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. However, the appellant's claimed lack of understanding is not substantive evidence to show that he was unaware of the charges. Further, the instructions on the application clearly indicated that applicants were required to disclose all arrests, charges and detentions, including any and all juvenile violations. 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 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 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.

² In *In the Matter of Richard Thomas* (CSC, decided September 3, 2014), the Commission granted an appeal based on similar circumstances. However, in that matter, the incident at issue was an isolated incident and it was clear that Thomas did not have knowledge of the charges filed against him and lacked an understanding of the criminality of his actions.

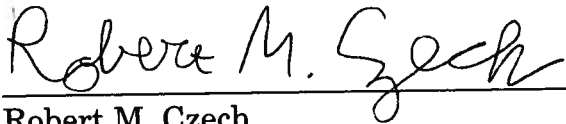
Finally, since the Commission has found that the falsification of the appellant's application was sufficient to support the removal of his name from the subject eligible list, it is unnecessary to determine whether his criminal record would also support the removal of his name.

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 3RD DAY OF SEPTEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and
Regulatory Affairs
Written Record Appeals Unit
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P.O. Box 312
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Attachment

- c. Jacob R. Miller
Stephen J. Wenger, Esq.
James J. Mulholland
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
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Robert M. Czech
Chair/Chief Executive Officer

January 31, 2013

Stephen J. Wenger, Esq
Steve Wenger Law
14092 Salem Road
Burlington, NJ 08016

Re: Jacob Miller – Corrections Officer Recruit (S9988R)
Removal – Unsatisfactory Criminal Record

Dear Mr. Wenger:

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

The Appointing Authority requested removal of Mr. Miller in accordance with *N.J.A.C. 4A:4-4.7(4)*, which permits the removal of an eligible candidate's name from the eligible list if the eligible has a criminal record which adversely relates to the employment sought.

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.

Address all appeals to:

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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
Jacob Miller
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