

B-19



STATE OF NEW JERSEY

In the Matter of Luis Rosado,  
Correction Officer Recruit (S9987M),  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

DOP Docket No. 2014-548

List Removal Appeal

ISSUED: JUL 21 2014 (JET)

Luis Rosado appeals the attached decision of the Division of Classification and Personnel Management (CPM), which upheld the removal of his name from the Correction Officer Recruit (S9987M), Department of Corrections, eligible list on the basis of falsification of his employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9987M),<sup>1</sup> achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on June 10, 2011. 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 his employment application. Specifically, the appointing authority asserted that the appellant failed to disclose that he was charged with Simple Assault on March 26, 1996 in violation of *N.J.S.A. 2C:12-1A*.<sup>2</sup>

On appeal to CPM, the appellant asserted, among other things, that he could not disclose the information since he was unaware of the charges against him. However, CPM determined that the appointing authority had presented a sufficient basis to remove the appellant's name from the subject eligible list.

<sup>1</sup> It is noted that the eligible list for Correction Officer Recruit (S9987M), Department of Corrections, expired on June 9, 2013.

<sup>2</sup> The charges were dismissed on September 23, 1996.

On appeal, the appellant asserts that he did not know that he was charged with Simple Assault when he was a juvenile. Further, the appellant explains that he previously requested his criminal records for review, and no information was provided regarding his juvenile criminal record. In this regard, he did not realize that his adult criminal records are maintained separately from his juvenile criminal records. The appellant adds that he was only 13 years old at the time the charges were brought against him. Moreover, the appellant states that he was unaware of the existence of the juvenile record because he did not have to appear in court and the matter was dismissed.

In support, the appellant provides a notarized statement which indicates, among other things, that he was unaware of his juvenile criminal record and the charges against him were dismissed. The appellant also provides a notarized statement from his mother, Nydia Rosado Roman, who indicates that she was not aware that a juvenile record would be created since the charges were dismissed.

In response, the appointing authority asserts that the appellant provided his employment application during pre-employment processing on December 3, 2012 and he failed to disclose that he was charged as a juvenile with Simple Assault on March 26, 1996. Further, the appointing authority contends that the employment application requires that any juvenile charges, arrests, or offenses be disclosed regardless if they were dismissed. The appointing authority adds that in response to question 43 on his employment application, "Have you ever been charged with or convicted of a disorderly person offense," the appellant answered "No." Rather, the appellant listed several motor vehicle violations which was not required. The appointing authority also indicates that in response to question 49 on the employment application, "Have you ever had any police contact, been taken into custody, or charged with a juvenile delinquency," the appellant answered "No." Further, the appointing authority states that it requires a properly completed employment application in order to review the qualifications and background of potential candidates. In this regard, the appellant had sufficient time to gather any documentation to ensure that the application was complete. It also states that the appellant's juvenile record indicates that the appellant had an attorney represent him in Superior Court for the March 1996 charge and that he demanded a jury trial. The appointing authority adds that the appellant's omission is sufficient justification to remove his name from the eligible list. Moreover, the appointing authority avers that in order to effectively manage the day-to-day operations of a prison system, it is imperative to select candidates who exhibit respect for the law.

## 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 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 requests the removal of the appellant's name from the eligible list on the basis of falsification of his employment application. In this regard, the appointing authority argues that the appellant was charged with Simple Assault in 1996, which he failed to disclose on his employment application. In support of its contentions, the appointing authority provides documentation from the Family Automated Case Tracking System, Juvenile Summary Detail, indicating that the appellant, when he was a juvenile, was charged with Simple Assault in 1996. Although the appellant argues that he was unaware of the charges, 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 Simple Assault in 1996 and he failed to disclose that information on his employment application. Moreover, the record evidences that the appellant was represented by an attorney for the incident who made a jury demand to the court prior to the matter being dismissed. 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 he did not realize that his adult criminal records are separately maintained from his juvenile criminal records, and his background check did not produce evidence of a juvenile criminal record, 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. Clearly, the appellant failed to disclose information in his background in response to the questions in the employment application, which asks, "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

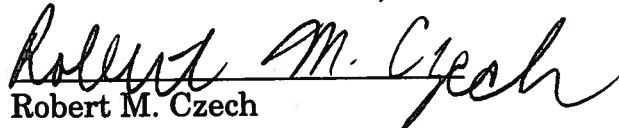
indicated "No." He failed to disclose that he was charged with Simple Assault. The type of omission presented is clearly significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Indeed, an appointing authority's assessment of a prospective employee could be influenced by such a charge, 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 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 16<sup>th</sup> DAY OF JULY, 2014



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
& Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
PO Box 312  
Trenton, New Jersey 08625-0312

c: **Luis Rosado**  
**James J. Mulholland**  
**Kenneth Connolly**



Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
Division of Classification & Personnel Management  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
Chair Chief Executive Officer

July 31, 2013

Luis A. Rosado	<b>Title Correction Officer Recruit</b> <b>Symbol: S9987M</b> <b>Jurisdiction: Department of Correction</b> <b>Certification Number: JU11M1</b> <b>Certification Date: 06/10/2011</b>
----------------	---

**Initial Determination: Removal – 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.4A:4-6.1(a) 6, which permits the removal of an eligible candidate's name from the eligible list for falsification of application.

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 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:

Henry Maurer, Director  
Appeals and Regulatory Affairs  
Written Record Appeals Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Assistant Director, Joe Hill Jr.



Mignon K. Wilson  
Human Resource Consultant

c: Judith A Lang, Director Dept of Corrections

