

CSC  
B-37



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Brandon Spivey,  
Correction Officer Recruit (S9987M),  
Department of Corrections

CSC Docket No. 2014-2235

List Removal Appeal

ISSUED: FEB 0 8 2015 (EG)

Brandon Spivey appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that the Department of Corrections (DOC) had presented a sufficient basis to remove his name from the Correction Officer Recruit (S9987M), eligible list due to an unsatisfactory criminal record.

The subject eligible list (S9987M) was promulgated on June 10, 2011 and expired on June 9, 2013. On February 13, 2013, the DOC notified the appellant that his name was being removed from the eligible list on the basis of an unsatisfactory criminal record and falsification of his preemployment application. Specifically, it indicated that the appellant had been arrested on April 22, 2003 and charged with simple assault when he was a juvenile. The appellant entered into a diversionary program with the Juvenile Justice Commission which included a six-month postponed disposition and mandatory anger management. The DOC also indicated that the appellant failed to disclose the above charge on his preemployment application. The appellant appealed his removal to CPM. CPM upheld the removal of the appellant's name from the subject eligible list.

On appeal, the appellant contends that since 2003 he has grown from an adolescent to a responsible adult. He states that since his high school graduation in 2003 he has held consistent fulltime employment. The appellant submits letters of recommendation and a recent job performance evaluation from his current employer.

The appointing authority, despite being provided the opportunity, did not submit any further arguments or evidence for the Commission to review.

### 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. Additionally, *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 Civil Service Commission (Commission) to remove an individual from an eligible list who has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

Further, *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 employment 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;
- 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.

Moreover, the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment 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).

In the instant matter, the DOC argues that the appellant's April 22, 2003 arrest for simple assault as a juvenile is sufficient to remove his name from the eligible list. The Commission disagrees. The record reveals this incident was the only time the appellant has been arrested, and it occurred 10 years prior to the certification when the appellant was a minor. The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. However, taking into consideration that the appellant's arrest was an isolated incident, the appellant's subsequent graduation from high school, his employment record and the totality of the evidence in the

record, the DOC has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record.

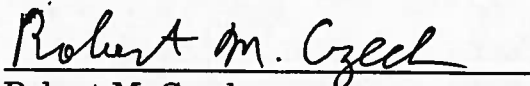
DOC also claims that the appellant falsified his pre-employment application. It provided a copy of the appellant's application to CPM in which the appellant failed to list his juvenile record. The appellant was required to provide a complete and accurate record of his background for review by the appointing authority as part of the pre-employment process. The record indicates that he failed to do so. In this regard, the Commission notes that the appellant failed to list his juvenile offense on his pre-employment application. On appeal, the appellant did not provide any arguments regarding the claim of falsification. However, even assuming, *arguendo*, that the appellant merely forgot to include this information, 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) (A Fire Fighter applicant who alleged he could not recall certain information omitted from an application should be removed from the list since an honest mistake is not an allowable excuse for omitting relevant information from an application). In this regard, the information that the appellant failed to disclose is considered material and should have been accurately indicated on his employment application. His failure to disclose this information is indicative of the appellant's lack of integrity and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Correction Officer Recruit and the falsification of his pre-employment application presents a basis to remove the appellant's name from the subject eligible list. Accordingly, based on the appellant's omission on his pre-employment application, the Commission finds sufficient basis in the record to remove his name from the eligible list for Correction Officer Recruit (S9987M).

### 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 4TH DAY OF FEBRUARY, 2015



Robert M. Czech

Chairperson

Civil Service Commission

**Inquiries  
and  
Correspondence**

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

**Attachment**

**c: Brandon Spivey  
James Mulholland  
Kenneth Connolly**



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
Division of Classification & 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

January 15, 2014

Brandon D Spivey	<b>Title Correction Officer Recruit</b>  <b>Symbol: S9988R</b> <b>Jurisdiction: Department of Corrections</b> <b>Certification Number: JU11M1</b> <b>Certification Date: 06/10/2011</b>
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**Initial Determination: Removal – Unsatisfactory Criminal Record**

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:4-4.7(a) 4 which permits the removal of an eligible candidate's name from the eligible list for unsatisfactory criminal history.

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 MSPLR. 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:

Adon D Spivey  
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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.

A handwritten signature in black ink, appearing to read "Mignon K. Wilson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mignon K. Wilson  
Human Resource Consultant

c: