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STATE OF NEW JERSEY

In the Matter of Michael Cieri,
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-140

Request for Reconsideration

ISSUED: MAR 09 2015 (JET)

Michael Cieri, represented by Nancy A. Valentino, Esq., requests reconsideration of the attached decision rendered on May 21, 2014, which found that there was a sufficient basis to remove his name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections, on the basis of falsification of the employment application.

In the prior decision, the appointing authority removed Cieri from the eligible list on the basis of falsification of his employment application. Specifically, the appointing authority asserted that the appellant failed to disclose on the employment application that he was charged with Defiant Trespassing in violation of *N.J.S.A. 2C:18-3b* and with Theft by Unlawful Taking in violation of *N.J.S.A. 2C:20-3a*. It was noted that the appellant was also charged with Public Urination and a summons was issued. In his appeal, Cieri argued that he did not list the information on the employment application because he was unaware that his neighbor filed charges against him and his neighbor later withdrew the charges, and he was unaware that a ticket constitutes a "summons." As set forth in detail in the attached decision, the Commission upheld the removal of Cieri's name from the subject list.

In the instant matter, Cieri contends that he did not attempt to mislead the appointing authority when he failed to list the charges on the employment application. Further, Cieri states that clear material errors occurred in the prior matter. Specifically, he asserts that the Commission failed to consider the affidavits that were presented in the prior matter. Cieri explains that the affidavits

indicated that he was completely unaware of the charges filed against him by Daniel Szieber at the time he submitted the employment application. In addition, Cieri asserts that the appointing authority's reference to the 2007 public urination charge was improper and it was not relevant to the background investigation. Moreover, the Commission apparently failed to consider that Cieri was unaware that a ticket issued by a Police Officer constituted a summons.

In response, the appointing authority maintains that Cieri's name should be removed from the eligible list for falsification of the employment application. Moreover, the appointing authority contends that Cieri has failed to show that a material error occurred or present any new evidence that would change the outcome of the case.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

The instant request for reconsideration is based on the assertion that Cieri did not attempt to mislead the appointing authority by failing to list the charges against him on the employment application. A review of the record in the instant matter reveals that reconsideration is not justified. Cieri has failed to provide any additional information to show that the prior decision was contrary to the evidence presented. In this regard, Cieri failed to provide any documentation to refute the appointing authority's argument that he falsified the employment application. Although Cieri argues that the Commission failed to consider the affidavits in the prior matter, his arguments are not persuasive. In the prior matter, the Commission reviewed the affidavits and found that it was reasonable that Cieri was unaware that Szieber filed charges against him at the time he submitted the employment application and that Szieber dismissed those charges. Thus, since the Commission reviewed the affidavits in the prior matter, there was no material error in that regard. Nonetheless, as noted in the prior matter, Cieri was clearly cognizant that he received a summons for public urination in 2007 and he failed to disclose that information on his application. As such, he clearly falsified the employment application by failing to disclose the 2007 public urination charge and the removal for falsification of the employment application was proper. Additionally, Cieri's arguments in this matter regarding the 2007 public urination charge are of no moment. The 2007 public urination charge was a necessary element to the appointing authority's assessment of Cieri's candidacy for a law enforcement position and he should have listed such information on the employment application. As noted in the prior decision, the primary question in

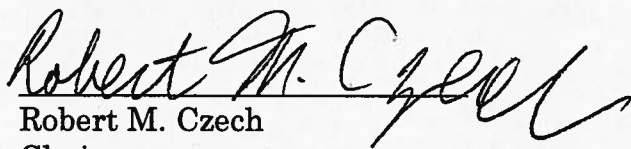
such a case is whether the candidate withheld information that was *material* to the position sought, not whether there was any intent to deceive on the part of the applicant. As such, the information regarding the 2007 public urination charge, which Cieri failed to disclose, is considered material and should have been accurately indicated on the employment application. The Commission finds it curious that a candidate for a law enforcement position would assert the belief that a "ticket" given by a Police Officer is not a "summons." Nevertheless, even assuming the validity of this assertion, the fact that Cieri was unaware that a ticket issued by a Police Officer constituted a summons did not excuse him from listing that information on the employment application. Thus, Cieri did not present any new evidence that would somehow change the outcome of the prior decision or show that a clear material error occurred. Accordingly, Cieri has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request for reconsideration 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 MARCH, 2015



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
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

**c: Michael Cieri
Nancy A. Valentino, Esq.
Jennifer Rodriguez
James J. Mulholland
Kenneth Connolly**

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STATE OF NEW JERSEY

In the Matter of Michael Cieri,
Correction Officer Recruit (S9987M),
Department of Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

DOP Docket No. 2014-898

List Removal Appeal

ISSUED: MAY 27 2014 (JET)

Michael Cieri, represented by Kurt David Raatzs, Esq., 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), 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 Defiant Trespassing on April 21, 2011 in violation of *N.J.S.A. 2C:18-3b* and with Theft by Unlawful Taking on April 21, 2011 in violation of *N.J.S.A. 2C:20-3a*. It is noted that the appellant was also charged with Public Urination on October 29, 2007 and a summons was issued. The appointing authority added 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." It is noted that the eligible list for Correction Officer Recruit (S9987M), Department of Corrections, expired on June 9, 2013.

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.

On appeal, the appellant asserts that he would have listed the charges on the employment application if he was aware that they were filed against him. In this regard, he explains that in April 2011, he performed home improvement work for Daniel Szieber who offered to pay him with copper piping that was stored in his garage in exchange for the work. The appellant agreed to the offer, removed the copper piping from the garage, and sold it. However, Szieber later informed the appellant that the copper was much more valuable than what he had anticipated for the value of the work appellant performed and that he planned to file criminal charges against the appellant. The appellant adds that he paid \$200 to Szieber and he thought that the disagreement was settled. In support, the appellant provides a notarized letter from Szieber indicating that he withdrew the charges the next day and the appellant was unaware that they were ever filed against him. The appellant provides his own notarized letter asserting that he was never served with or notified of any charges. Thus, the appellant asserts that his name should be restored to the eligible list.

In response, the appointing authority asserts that the appellant provided his employment application during pre-employment processing on January 7, 2013 and he failed to disclose his arrest history in response to question 43 of the employment application. Further, the appointing authority states that it requires a properly completed employment application in order to review the qualifications and background of potential candidates. The appointing authority adds that the appellant's omissions are sufficient justification to remove his name from the eligible list. In this regard, the appellant failed to disclose a 2007 summons for Public Urination and the 2011 charges of Defiant Trespassing and Theft by Unlawful Taking. He also failed to provide any documentation to show that the charges were dismissed. 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.

In reply, the appellant asserts that although he unwittingly made a false statement of material fact on his employment application, he did not engage in willful and deceptive conduct. Further, he did not disclose the 2007 summons for Public Urination on his employment application because he did not realize that a "ticket" is a summons. The appellant adds that the summons is not relevant to the appointing authority's background investigation into his integrity, qualifications, knowledge, and abilities as a potential candidate. Moreover, the 2007 summons should not now be considered since the appointing authority failed to previously mention it as a reason for the removal.

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 appellant argues that he did not engage in willful or deceptive conduct because he was unaware of the April 2011 charges against him. The appellant also argues that the charges of public urination are not material to his potential appointment as a Correction Officer Recruit. Based on the appellant's submissions regarding the April 2011 charge, it is evident that he could have reasonably believed that the matter concerning the taking of the copper pipe had been resolved and he was unaware of the charges filed against him by Szieber. In this regard, Szieber submitted a statement attesting to that fact. However, the appellant was clearly cognizant that he received a summons for public urination in 2007 and failed to disclose this 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 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 a "ticket" is a summons and the 2007 public urination incident is not relevant to the appointing authority's background investigation is unpersuasive. 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 public urination. 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 21st DAY OF MAY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
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**c: Michael Cieri
Kurt David Raatzs, Esq.
James J. 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

June 25, 2013

Michael Cieri	Title: Correction Officer Recruit Symbol: S9987M Jurisdiction: Department of Corrections Certification Number: JU11M1 Certification Date: 06/10/11
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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, 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.

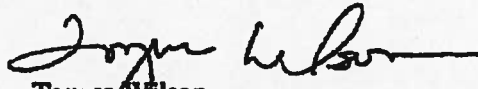
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, 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.

Michael Chern
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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. Muhlolland, Director
File

