

B-30



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Frank Rodriguez,
Correction Officer Recruit (S9988R),
Department of Corrections

CSC Docket No. 2015-810

List Removal

ISSUED: MAY 22 2015 (DASV)

Frank Rodriguez, represented by Charles M. Grossman, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM), which upheld the removal of his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections, due to the falsification of his employment application.

By way of background, the appellant, a nonveteran, took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score, and was ranked on the subsequent list. The appellant's name was certified on May 23, 2013. In disposing of the certification, the appointing authority sought the removal of the appellant's name due to the falsification of his employment application. Specifically, the appellant was notified by letter, dated December 5, 2013, that his name was removed from the subject eligible list because he did not disclose a 2012 charge of simple assault. The appellant appealed to CPM, indicating that he did not intend to hide or deny any information. He thought he had a "clean record" since he was not arrested. He was only summoned to court. Additionally, he explained that the charge arose from an incident at a night club on March 1, 2012, where a group of females was attacking his girlfriend and he attempted to break up the altercation. Upon appearing in court, the females were able to settle their differences and the charge against the appellant was dismissed on April 25, 2012. However, CPM determined that the appointing authority presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant indicates that the dictionary definition of falsification requires a person to deceive consciously and with intent, which the appellant asserts that he did not do. He reiterates that the females were "looking for trouble" and confronted him and his girlfriend later at the parking lot of the night club. The police responded to the altercation, but no one was arrested. The parties were summoned to court. They mediated their differences and all of the charges were withdrawn. Thus, the appellant contends that "he did nothing wrong." The appellant notes that he has an exemplary background. He sets forth his educational and employment history, which includes a diploma from Lincoln Technical Institute. He currently is a finance counselor at St. Barnabas Hospital. Moreover, the appellant states that he is bilingual in Spanish and English, a skill which would be an asset to a correction officer. In support of his appeal, the appellant submits letters from his former supervisor, a Police Officer, and a former high school vice principal, attesting to his "outstanding character."

In response, the appointing authority asserts that since the appellant did not provide a complete history of his background, it was denied the opportunity to make a determination as to the appellant's eligibility for a position. The appointing authority emphasizes that the employment application provided clear and explicit instructions requiring candidates to disclose all of the charges against them, regardless of the outcome of the charges. The employment application defined "charge" as any "indictment, complaint, summons, and information" even if the offense did not result in a physical arrest. The appointing authority stresses that the appellant admits that he received a summons. Thus, it contends that the appellant's reason for not disclosing the charge because he was not arrested or convicted is unpersuasive. The appellant should have disclosed his simple assault charge. Moreover, the employment application asked candidates to submit documents pertaining to the disposition of the charges against them. In the appellant's case, the appointing authority states that he did not submit the required documents. Rather, he indicated "N/A" (not applicable) on the employment application. Lastly, the appointing authority indicates that the details surrounding the appellant's charge should not be considered since it is not seeking the appellant's removal based on an unsatisfactory criminal record or background report. His removal is being sought because he failed to disclose material information. Therefore, the appointing authority maintains that the appellant is not a suitable candidate and should be removed from the subject eligible list. In support of the appellant's removal, the appointing authority submits a copy of his employment application, which includes a notice to the candidates of removal for failure to disclose a "N.J.S.A. 2C CHARGE WHETHER IT HAS BEEN DISMISSED BY THE COURT," and records from the New Jersey Automated Complaint System, which reveal the appellant's simple assault charge under *N.J.S.A. 2C:12-1a*.

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 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. *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.

It is clear that the appellant failed to disclose requested information on his employment 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 omission regarding his record is sufficient cause to remove his name from the eligible list. The Commission emphasizes that, although the appellant provides an explanation as to the incident, the circumstances of the simple assault charge and the appellant's background are not primarily at issue in this proceeding. Rather, the appellant failed to disclose information on his employment application, which clearly instructed applicants as to the information to be disclosed, including any summons or offense that did not result in a physical arrest. 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 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. Accordingly, there is a sufficient basis to remove the appellant's name from the subject eligible list based on the falsification of his employment application.

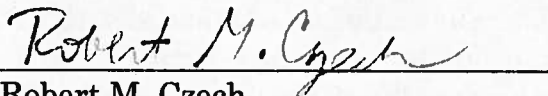
Nonetheless, the Commission stresses that this determination does not preclude the appellant from filing for the next Correction Officer Recruit examination or any other future law enforcement examination. The appellant is advised to answer all questions fully and accurately on the employment application that he submits.

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 20TH DAY OF MAY, 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: **Frank Rodriguez**
Charles M. Grossman, Esq.
James 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

September 02, 2014

Frank Rodrigez

Title Correction Officer Recruit

Symbol: S9988R

Jurisdiction: Department of Correction

Certification Number: JU13D01

Certification Date: 05/23/2013

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 (DARA) 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.

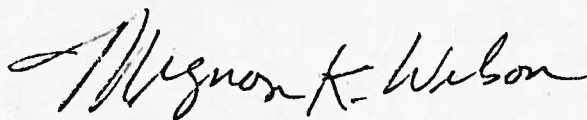
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947,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

Frank Rodrigez

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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 that reads "Mignon K. Wilson". The signature is written in a cursive style with a large initial "M".

Mignon K. Wilson
Human Resource Consultant

c: Judith A Lang, Director Dept of Corrections

