

CSC  
B-9



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Matthew Mason,  
Correction Officer Recruit (S9988R),  
Department of Corrections

List Removal

CSC Docket No. 2015-658

ISSUED: **MAY 08 2015** (HS)

Matthew Mason, represented by Stuart J. Alterman, Esq., appeals the attached decision of the Division of Classification and Personnel Management<sup>1</sup> (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), achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated May 23, 2013 and expires May 22, 2015. The appellant's name was certified to 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, falsification of his application and an unsatisfactory driving record. Specifically, the appointing authority asserted that in 2004, the appellant was charged with Possession or Consumption of Alcoholic Beverages in violation of *N.J.S.A. 2C:33-15a*, which was conditionally disposed of through a juvenile referee, and that the appellant failed to disclose this charge on his application. The appointing authority also asserted that the appellant's driver abstract contained at least eight moving violations. 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.

<sup>1</sup> Now the Division of Agency Services.

On appeal to the Civil Service Commission (Commission), the appellant initially acknowledges that he was charged with Possession or Consumption of Alcoholic Beverages as a minor but stresses that the matter was discharged through a juvenile referee rather than a judicial determination, that no conviction was obtained, and that the incident was a disorderly persons offense occurring more than 10 years prior, when he was approximately 16 years old. Emphasizing that *N.J.A.C. 4A:4-4.7(a)* states that an eligible may be removed from a list based on a criminal record that adversely relates to the employment sought, the appellant contends that nothing regarding the charge of possessing or consuming an alcoholic beverage would bar his placement on the eligible list. In this regard, he argues that the charge does not call into question his integrity or ability to perform the duties of the position. Additionally, he avers that the offense was not serious since possession or consumption of alcohol is not an offense by itself and that the same conduct performed at his current age would be legal; no harm or damage was done and no intoxication was reported; the offense was only a youthful indiscretion; and the offense was an isolated event. Finally, the appellant contends that prior decisions of the Commission, including *In the Matter of Michael Acosta* (MSB, decided June 9, 2004), support his position that his removal from the eligible list was unjustly harsh.

In response, the appointing authority argues that it appropriately removed the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. In this regard, the appointing authority contends that a candidate's juvenile or adult criminal record, whether sealed or expunged, will still provide a disability when seeking any type of position as a law enforcement officer. It argues that in this case, the appellant's juvenile record, which was not expunged, clearly adversely relates to the employment sought, as a person with a criminal record is not suitable for a position in law enforcement. It further argues that the application clearly informed candidates of all of the reasons a potential candidate could be removed from the preemployment process.

The appointing authority also argues that the appellant falsified his application by failing to disclose the 2004 charge of Possession or Consumption of Alcoholic Beverages. In this regard, it argues that the "Arrest History" section of the preemployment application asked questions related to any type of adverse interaction with law enforcement regardless of the outcome and it clearly indicated that juvenile information must also be disclosed. For example, the application defines "Offense" to include "all misdemeanors, felonies, disorderly persons offenses of any criminal statute listed under New Jersey's Criminal Code (*N.J.S.A. 2C*)," including juvenile violations. For question 46, on page 18, applicants are also specifically required to disclose all charges and juvenile matters. Applicants are also instructed to include all charges including those that are discharged under any diversion program or dismissed. More specifically, the appointing authority maintains that in response to question 46, "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 "Yes" and disclosed a 2008 disorderly conduct charge but did not disclose the 2004 charge. The appointing authority adds that in response to question 52, "Have you ever had any police contact, been taken into custody, or charged with juvenile delinquency?" the appellant answered "No" and wrote "N/A" in the box following that question. In support of its assertion of falsification, 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 Possession or Consumption of Alcoholic Beverages in 2004 and that the charge was dismissed in 2005.

Additionally, the appointing authority argues that the appellant's driving record provides another basis for his removal from the eligible list. In this regard, the appointing authority states that the appellant's driving record indicates that he received 17 tickets from 2006 to 2013 for various motor vehicle infractions. The appointing authority adds that it received copies of two subsequent tickets issued to the appellant, increasing the number of his motor vehicle violations to 19. In support of its assertion of an unsatisfactory driving record, the appointing authority submits the appellant's driver abstract, which reflects 17 violations plus four suspensions of the appellant's license occurring between 2006 to 2009.

Finally, the appointing authority contends that the appellant has an unsatisfactory employment record. In this regard, it argues that the appellant's employment has been unstable, with short periods of time at each position, and multiple terminations and disciplinary actions for performance issues. The appointing authority requests either that the appellant's employment history be taken into account even though its initial request to remove the appellant from the eligible list did not rely on this basis, or that it be permitted to reserve the right to remove the appellant from the list on this basis if warranted by future circumstances.

In reply, the appellant argues with respect to the allegation that he falsified his preemployment application, that intent is a necessary element and that no evidence has been presented which establishes that he intended to falsify his application. He contends that his situation was "nebulous" given that his juvenile matter was disposed of through a referee rather than through a court, judge or plea bargain. While the appellant acknowledges that he was charged with Possession or Consumption of Alcoholic Beverages as a minor, he maintains that failing to list this fact was not a deliberate omission, and he did not intentionally misstate a material fact with respect to his arrest history. Rather, he believed that because no conviction was obtained and the matter was discharged through a juvenile referee rather than through a judicial determination, this was a juvenile administrative matter rather than a formal criminal one. The appellant also reasons that he did

not falsify his application because he made the 2004 incident known by mentioning on page 10 of his application, in the section pertaining to "problems at school," that he had been suspended in high school for purchasing alcohol at a bus stop in 2004. Thus, the appellant argues that by failing to state the incident on page 18, he simply placed the incident in the wrong area of the application. The appellant further states that he is not a legal expert and is unfamiliar with the nuances of the justice system. He realizes that, in hindsight, he clearly should have listed the incident on page 18, and not simply in the school discipline section. However, he argues that an honest, and not unreasonable mistake in filling out an application is not *de facto* falsification. According to the appellant, it makes little sense that he would deliberately lie about such a minor, distant matter that was favorably discharged pre-trial but still disclose a disorderly conduct charge which occurred at age 19. While he states that his accidental omission was unfortunate, he posits that a lack of perfect recall regarding the 2004 incident, which occurred many years ago when he was a minor and which did not result in any serious consequences, does not establish that he falsified his application. Rather, it was much more likely that it was an innocent error, and imperfection on his application should not constitute falsification.

With respect to his driving record, the appellant acknowledges that he has had several speeding violations, a failure to signal turn violation and a careless driving violation within the past eight years. However, the appellant argues that while these violations may amount to more than eight points in eight years, this does not account for the five Annual Safe Driving Point Credits that he had received nor does it account for the Safe Driving course he completed. He also indicated that the total current points on his license is zero. He also notes that his first instance of speeding occurred more than eight years ago and, thus, was irrelevant under the eight-year period observed by the appointing authority. The appellant further contends that he has never had eight points on his license at any given point when his good-driving and driving class credits are taken into account. He avers that if the points on his license are to be considered cumulatively, then his credits should be considered as well. Thus, the appellant posits that it is inequitable to base his removal from the eligible list upon his driving record.

In reply, the appointing authority notes that the appellant was charged with two disorderly persons offenses in 2004 and 2008 respectively and only disclosed the 2008 offense on his application where instructed to do so. The appointing authority reiterates that by failing to provide the details of his 2004 juvenile Possession or Consumption of Alcoholic Beverages charge, he falsified his application. It also reiterates that the instructions preceding the "Arrest History" section of the application were clear and all terms were specifically defined.

## 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 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.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;
- 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)9*, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). *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.

In the instant matter, the appointing authority argues that although the appellant was charged with Possession or Consumption of Alcoholic Beverages in 2004, he did not list that charge on his application. In support, the appointing authority provides documentation from FACTS indicating that the appellant, as a juvenile, was charged with Possession or Consumption of Alcoholic Beverages in 2004. Thus, it is clear that the appellant failed to disclose that information on his employment application. Although the appellant highlights the fact that the matter was discharged through a juvenile referee pre-trial without a plea bargain and that he was under the impression that this was a juvenile administrative matter, the instructions in the application clearly indicated that applicants were required to disclose all charges, even if discharged under any diversion program or dismissed, and juvenile matters. While the appellant also contends that he made the incident known by stating in the section pertaining to "problems at school" that he had been suspended in high school for purchasing alcohol at a bus stop in 2004, this information cannot be considered an adequate disclosure of the fact that the appellant was actually *charged*. The appellant did not list the charge on the chart following question 46 on page 18 and answered "No" in response to question 52, "Have you ever had any police contact, been taken into custody, or charged with juvenile delinquency?" The appointing authority could not reasonably have been expected to infer the fact that the appellant was charged from the information stated in the "problems at school" section given the application's clear and specific instructions to disclose all *charges*. 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 is sufficient cause to remove his name from the eligible list. The appellant failed to disclose this information on his application. Further, the instructions in the application clearly indicated that applicants were required to disclose all charges, even if discharged under any diversion program or dismissed, and juvenile matters. 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.

Additionally, the appellant's driving record revealed numerous violations and suspensions over the period from 2006 to 2013. Regardless of any point credits the appellant received, his record at the time of the instant certification revealed a persistent disregard for the motor vehicle laws, behavior that is incompatible with the duties of a law enforcement officer. *See Brendan W. Joy v. City of Bayonne Police Department, supra*. Such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Correction Officer Recruit and provides an additional basis to remove his name from the eligible list.

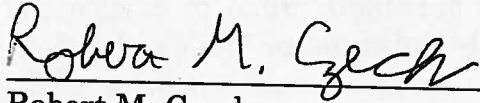
Accordingly, the falsification of the appellant's application and his driving record provide sufficient bases to remove the appellant's name from the eligible list. It is, therefore, unnecessary to determine whether his criminal and employment records would also support the removal of his name.

### 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 6<sup>TH</sup> DAY OF MAY, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment

- c. Matthew Mason  
Stuart J. Alterman, Esq.  
James J. Mulholland  
Kenneth Connolly





Received  
SEP 5 - 2014  
By CSC/SLO

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

August 08, 2014

Matthew Mason

**Title: Correction Officer Recruit**

**Symbol: S9988R**

**Jurisdiction: Department of Corrections**

**Certification Number: JU13D01**

**Certification Date: 05/23/2013**

**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 (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.

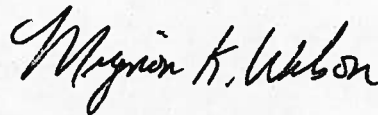
Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947,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

Matthew Mason

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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 cursive script that reads "Mignon K. Wilson".

Mignon K. Wilson  
Human Resource Consultant