

B-47



STATE OF NEW JERSEY

In the Matter of Joseph A. Dellavella,  
Correction Officer Recruit (S9988R),  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1404

List Removal Appeal

ISSUED: JUN 19 2015 (JET)

Joseph A. Dellavella appeals the removal of his name from the Correction Officer Recruit (S9988R), Department of Corrections, eligible list on the basis of an unsatisfactory criminal history and falsification of the employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score, and was ranked on the subsequent eligible list. 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 from the eligible list on the basis of an unsatisfactory criminal history and falsification of the employment application. Specifically, the appointing authority asserted that on September 9, 2011, the appellant was charged with unauthorized entry in Jackson Township in violation of *N.J.A.C. 7:25-2.5(a)* and he was fined \$74. On October 13, 2011, the appellant was charged with shoplifting (dismissed). It is noted that the shoplifting charge was dismissed as a result of the appellant's participation in a pre-trial diversionary program. On November 25, 2011, the appellant was charged with defiant trespasser in Manchester Township in violation of *N.J.S.A. 2C:18-3B(2)* (dismissed). The appointing authority also stated that the appellant failed to list the defiant trespasser and unauthorized entry charges on the employment application. Moreover, the appointing authority indicated that the appellant submitted an employment verification form that was incorrect and misleading. It is noted that the appellant requested direct review of his appeal by the Civil Service Commission (Commission).

On appeal, the appellant asserts that he has been employed as a civilian contracted mechanic at the joint Fort Dix/McGuire/Lakehurst military base and his duties have included maintaining and overseeing tactical test platforms. Further, the appellant explains that it has always been his desire to pursue a career in law enforcement as a Corrections Officer. In this regard, his accomplishments in high school included participation in State Trooper Youth Week as a platoon leader and completing a student internship with the Plumstead Township Police Department. The appellant avers that he was also awarded the PBA Local 390 scholarship. Additionally, the appellant asserts that the charges against him were dismissed. In this regard, the appellant explains that he was young and immature at the time of the incidents, and he allowed himself to be influenced by the wrong friends. The appellant now realizes that his actions were irresponsible and he has learned from his mistakes. The appellant adds that the prosecutor recommended that he should participate in a pre-trial diversionary program. Moreover, the appellant explains that he did not list the trespassing charges on the employment application because he misunderstood the instructions. He underscores that he did not attempt to conceal any information on the employment application in an attempt to mislead the appointing authority.<sup>1</sup> As such, his name should be restored to the subject list.

In response, initially, the appointing authority argues that the appellant cannot directly appeal this matter to the Commission since he did not exhaust all the administrative remedies that are available to him. In this regard, the appointing authority argues that the appeal should be dismissed since the appellant failed to present this matter to the Division of Agency Services (Agency Services) for an initial determination. Further, the appointing authority asserts that it may consider criminal charges when evaluating candidates for potential employment. In this regard, the appointing authority contends that charges brought against the appellant in September 2011, October 2011, and November 2011, automatically disqualifies the appellant as a candidate despite that he participated in a diversionary program and the charges were dismissed. Moreover, the appointing authority states that the charges were brought against the appellant little more than a year prior to when he applied for the subject examination.

Additionally, the appointing authority contends that the appellant falsified the employment application. The appointing authority explains that the appellant was required to complete the employment application so it could properly conduct a background investigation. Specifically, the appellant only listed on the employment application that he was charged with shoplifting and he failed to disclose that he was charged with defiant trespasser and unauthorized entry. The appointing authority adds that the appellant failed to provide relevant court dispositions and police reports for the appointing authority's review and inappropriately submitted

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<sup>1</sup> The appellant indicates that he went four wheeling with some friends and he was issued a summons since he did not have written consent from the property owner. The appellant adds that the property owner later provided written consent and the charges were dismissed.

an employment verification form that he personally completed which incorrectly indicated that his employer, ARINC, was no longer in business. The appointing authority subsequently confirmed that the verification form is incorrect since ARINC is still doing business.

### CONCLUSION

*N.J.S.A. 11A:4-11*, in conjunction with *N.J.A.C. 4A:4-4.7(a)(4)*, provides 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. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)(4)* to determine whether the appellant's criminal history adversely relate to the position of Correction Officer Recruit. 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, firefighter or correction officer and other titles as determined by the Commission. It is noted that 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, supra*. In *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal to the former Merit System Board (Board) for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement. See *N.J.S.A. 2C:52-3* and *N.J.S.A. 2C:52-8*.

Additionally, *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 an appointment. The appellant's shoplifting charge was a federal court charge that resulted in his participation in a pre-trial diversionary program. The appellant's participation in this federal pre-trial diversionary program is analogous to *N.J.S.A. 2C:36A-1*, where, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. See *State v. Marzolf*, 79 N.J. 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's participation in the pre-trial diversionary program should still be considered in removing his name from the subject eligible list.

*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 individual from an eligible 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 or her name from an eligible list was in error.

Initially, the appointing authority's argument that the appellant did not exhaust all of the administrative remedies available to him is without merit. In accordance with *N.J.S.A. 11A:2-6(b)*, the Commission shall, on review of the written record, render final administrative decisions on non-major disciplinary appeals, such as list removal appeals. Thus, while Agency Services may conduct a first-level review of a list removal appeal, an appellant is not precluded from requesting direct review by the Commission.

In the instant matter, while it is commendable that the appellant has apparently changed his behavior since his arrest in October 2011, less than 10 months had elapsed from the time he was arrested to the time he applied for the subject position. Thus, given the nature of the incident and charges, not enough time has elapsed in order to declare that the appellant has sufficiently rehabilitated herself. Further, the appellant was an adult at the time of the arrest. In addition, the appellant does not adequately explain his involvement with the charges. The seriousness of the shoplifting incident cannot be ignored, especially since it occurred on federal property at the military base where the appellant was employed.

Additionally, the appellant has not provided any specific evidence of his rehabilitation. In this regard, the nature of the charges clearly adversely relate to the title of Correction Officer Recruit. Individuals in this title must work closely with individuals who have criminal records and present an appropriate example. Further, the Commission is mindful of the high standards that are placed upon law enforcement personnel. In this regard, it is recognized that a Correction Officer is a law enforcement employee who must help keep order and holds a highly visible and sensitive position within the community. 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. Clearly, the appellant's criminal record is inimical to that goal.

Additionally, it is clear that the appellant falsified the 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 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 response to question 54 on the employment application, "Have you ever been arrested or charged with a violation of a city or local ordinance of the disorderly persons offense act," the appellant checked "no" and indicated "n/a." Further, in response to question 46 on the employment application, "have you ever been arrested, indicted, charged with or convicted of a criminal, sexual, or disorderly persons offense in this State or any other jurisdiction," the appellant checked "no" and indicated "I was issued a summons for a shoplifting charge. I was not arrested." Contrary to the appellant's assertions on the employment application, based on the information noted above, it is clear that he was arrested and charged with shoplifting. Further, the appellant failed to list the defiant trespasser and the unauthorized entry charges against him. Even if the appellant forgot about the defiant trespasser and unauthorized entry charges, it did not excuse him from listing that information on the employment application. 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. The information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his employment application and constituted falsification of the 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. Therefore, there is a sufficient basis to remove the appellant's name from the eligible list.

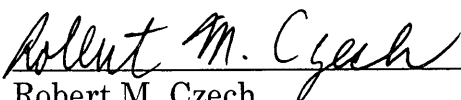
Accordingly, based on the totality of the record, the appointing authority has submitted sufficient evidence to support the removal of the appellant's name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections.

### 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 17<sup>th</sup> DAY OF JUNE, 2015



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