



STATE OF NEW JERSEY

In the Matter of Antonio Flores,
Correction Officer Recruit, Juvenile
Justice Commission (S9999U),
Juvenile Justice Commission

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2019-169

List Removal Appeal

ISSUED: NOVEMBER 2, 2018 (SLK)

Antonio Flores appeals his removal from the eligible list for Correction Officer Recruit, Juvenile Justice Commission (S9999U), on the basis of falsification of his pre-employment application.

By way of background, the appellant's name appeared on certification OS170539 that was issued to the appointing authority on August 16, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he falsified his application.

Specifically, the appointing authority's background report indicates that question 27 on the application asked the appellant to provide information for its criminal background investigation including juvenile offenses. Further, the appointing authority's investigation discovered that the appellant failed to disclose that he was arrested in Seabright on April 25, 1996 for criminal trespass/defiant trespass and on July 3, 1997 for disorderly conduct. Both charges were dismissed.

On appeal, the appellant indicates that neither he nor his parents recalled that he was disciplined for these incidents. Additionally, he contacted the Seabright Police Department who informed him that it was unable to locate these records. Further, the Monmouth County Prosecutor's Juvenile Division advised him that any information concerning these incidents would have been destroyed due to their age. Accordingly, the only information that he could retrieve concerning these incidents was the dispositions of these matters from the Monmouth County Family Court. The appellant emphasizes that he did not intentionally falsify his application.

In reply, the appointing authority submits its background report, including supporting documentation.

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 Civil Service Commission (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 or her name from an eligible list was in error.

It is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a municipal police department, when requested for purposes of making a hiring decision. However, *N.J.S.A.* 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. Accordingly, the disability arising under *N.J.A.C.* 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal.

In the instant matter, it is noted that at the time of the August 31, 2016 subject examination closing date, the appellant was 33 years old. Further, the incidents for the alleged falsification took place nearly 19 and 20 years ago when the appellant was approximately 13 or 14 years old. The appellant explains that neither he nor his parents were aware that he was subject to discipline for these incidents. Further, the appellant explains that due to the amount of time that has passed since these arrests, except for the dispositions from the Monmouth County Family Court which indicate that the charges were dismissed, the police department and courts have destroyed the files that provide further details for these incidents. 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 his 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. In this matter, the Commission notes that information omitted from the appellant's application, in and of itself, would not constitute sufficient cause to remove his name from the subject eligible list. Thus, the Commission finds that the omission of this information did not amount to the falsification of a material fact

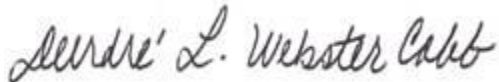
from his application and did not support the removal of his name from the eligible list. *See In the Matter of Giuseppe Tubito* (CSC, decided April 9, 2014), *In the Matter of Julio Rivera* (MSB, decided February 11, 2004), *In the Matter of Daniel Labazzo* (MSB, decided September 25, 2002) and *In the Matter of Marlon Chiles* (MSB, decided September 6, 2006).

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the for the Correction Officer Recruit, Juvenile Justice Commission (S9999U) eligible list, for prospective employment opportunities only.

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 31st DAY OF OCTOBER, 2018



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