STATE OF NEW JERSEY

In the Matter of Dominick Dellagrazie, Sheriff's Officer (S9999A), Middlesex County	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2021-1579	:	List Removal Appeal

ISSUED: May 2, 2022 (JET)

Dominick Dellagrazie, represented by Catherine M. Elston, Esq., appeals the removal of his name from the Sheriff's Officer (S9999A), Middlesex County eligible list on the basis of an unsatisfactory employment record.

The appellant took the open competitive examination for Sheriff's Officer (S9999A),[1] achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on September 18, 2020 (OL200730). 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 employment record. Specifically, the appointing authority asserted that the appellant was terminated from employment at the Port Authority of New York/New Jersey (Port Authority) on November 7, 2014, and it provided documentation indicating that he was involved in the work-related infractions that led to his removal. The appointing authority alleged that the appellant, after graduating from the Police Academy and while serving as a Probationary Police Officer (PPO), went to a bar in August 2014 with classmates from the Police Academy who were also serving as PPOs, and he allegedly kicked a restroom door. When questioned about the incident, the appellant denied that he had kicked the restroom door, but rather, he stated that he had pushed the restroom door open with his foot, as there was no door handle and that he would not have kicked the restroom door as he does not have cartilage in his knee. The appointing authority alleged that, with respect to his explanation pertaining to the cartilage in his knee,

[1] The S9999A examination had a closing date of August 31, 2019.

he had recently completed an approximate 11 mile run while in Police Academy training. The appointing authority states that the Port Authority ordered the appellant not to discuss the incident with any of the PPOs who were present at the time of the incident, however, it confirmed that the appellant suggested to other PPOs that they should avoid admitting that they were intoxicated while at a bar in August 2014, and that they should "just remember no one was intoxicated." The appointing authority also indicated that the Port Authority suspended and terminated the appellant from his position as a PPO for violating a direct order as a result of discussing the incident with the other PPOs.[2]

In his initial appeal filed on April 28, 2021, the appellant requested a 30-day extension at that time to retain legal counsel, which was granted, and the appellant's attorney subsequently requested three additional extensions.[3] On August 4, 2021,

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[2] It is noted that the appointing authority provided a report from the Port Authority indicating that, "At the very end of the interview, the appellant and the other PPOs were ordered not to discuss the contents of the interview with anyone other than PIU staff." Subsequently on the following day, during an interview with a PPO, the Port Authority recovered a text message indicating that the appellant advised the PPO to call if he had questions about the investigation interview. During the Port Authority's OIG internal affairs interview, the PPO confirmed that he called the appellant to discuss the contents of the appellant's interview, and as a result of the discovery, the appellant was charged with failure to follow a direct order and obstructing an official OIG investigation. The appellant explained that he was one of the oldest PPOs in the graduating class and, therefore, he felt responsible for looking out for the younger PPOs … which is why he discussed his interview with a PPO. The Port Authority asked the appellant if he was instructed to follow orders while serving in the military, which he acknowledged in the affirmative. As a result, the appellant was placed on an Administrative Suspension and was relieved of his firearms and credentials. In the Port Authority's Internal Affairs Investigative Action Report dated October 9, 2014, it was indicated that the appellant was advised that the allegation that he had failed to follow a direct order given to him at the conclusion of his Internal Affairs interview on September 18, 2014 was sustained. The appellant was further advised that he had obstructed the Port Authority's Internal Affairs investigation by having a conversation with a fellow PPO, wherein he divulged the contents of the interview. The appointing authority provides a November 10, 2014 report from the Port Authority, indicating that on November 7, 2014, 11 PPOs were ordered to respond to Port Authority Probationary Police Headquarters and prior to departing their respective Police Commands, each PPO surrendered their service weapons to their commanding officers. The order was the result of a determination to immediately terminate nine of the PPOs and issue discipline in lieu of termination to three other PPOs for their misconduct pertaining to the 113th Police Academy graduation party at the Texas Arizona Bar and Grill. The appellant was one of the nine PPOs that was immediately terminated.

[3] As will be discussed more fully, extensions are not regulatory, and as such, are not required to be granted. By letter dated June 7, 2021, the appellant's attorney advised Division of Appeals and Regulatory Affairs (DARA) staff that she was representing the appellant in this matter. By letter dated June 9, 2021, the appellant's attorney requested all documentation that was forwarded from the appointing authority to this agency in support of the appellant's removal. By e-mail, the appellant's attorney requested a further extension to October 14, 2021, which was granted. By e-mail dated October 14, 2021, the appellant's attorney indicated that, although the extension was granted until October 14, 2021, the copy machine in her office broke, and as a result, she was unable to send her client documents for his review. As such, she requested an extension until Monday, October 18, 2021. The appellant's attorney indicated that she would send a letter to the appointing authority to confirm that the extension was granted as soon as her office equipment was functional.

DARA sent the parties a letter affording the parties 20-days to submit further arguments or documentation. By e-mail dated October 14, 2021, the appointing authority indicated that it did not receive notice of the appellant's appeal, or his request for an extension so that he could obtain an attorney, and it objected to the appellant's request for an extension. By e-mail dated October 14, 2021, the appellant's attorney indicated that she was "thoroughly confused," as she assumed that the documents provided by the appointing authority upon her request for such information with respect to the appellant's appeal constituted the appointing authority's response to the appeal. The appellant's attorney stated that, since it appeared the appointing authority was requesting to submit additional information beyond what was already provided to this agency, the appellant's attorney inquired if her submission was due after the appointing authority's submissions. The appellant's attorney stated that, if the appointing authority did not submit anything further, she was requesting an extension to file her submissions. In response, by e-mail dated October 14, 2021, DARA staff notified the parties that the appointing authority's objection to the extension request would be added to the record for review. By e-mail dated October 14, 2021, the appointing authority acknowledged that it would respond to the appellant's appeal.[4] Due to the confusion expressed by the appellant's attorney with respect to the submissions, DARA staff notified the parties by e-mail that the appellant's attorney's submissions were due on October 18, 2021, and no further extensions would be granted, and the appointing authority would be provided with the opportunity to respond.[5]

The appellant asserts that, although his attorney submitted the appeal on his behalf, he was not required to file any submissions with this agency until after the receipt of full documentation from the appointing authority with respect to the removal. The appellant states that the August 4, 2021, 20-day letter was issued to the parties, with a deadline to respond by August 24, 2021.[6] The appellant adds that on October 14, 2021, the appointing authority advised this agency that it did not

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[4] By e-mail dated October 14, 2021, DARA staff notified the parties that, although the August 4, 2021 letter provides a 20-day time frame to respond, the timeframe is not statutory, and therefore, the record remains open until it is considered complete.

[5] DARA staff, by way of an October 18, 2021 e-mail, advised the appellant's attorney that it appeared that the appointing authority did not receive the August 4, 2021, 20-day letter, and the appellant had received the materials the appointing authority sent to this agency to dispose of the certification. It was explained that an appointing authority must submit information to this agency in order to dispose of a certification. Further, it was explained that the appointing authority, upon request from the candidate, shall provide the eligible with copies of all materials sent to the appropriate Civil Service Commission (Commission) representative. If the documents appear sufficient, then the removal is approved and a notice of removal is sent with appeal rights information to the candidate. If an appeal is pursued, the appointing authority is given the opportunity to respond as a part of the appeals process as set forth in *N.J.A.C.* 4A-4-4.7(b). The appellant's attorney provided her submissions on October 18, 2021, and the appointing authority responded on October 28, 2021.

[6] As indicated previously, 20-day letters are not statutory or regulatory in nature, and as such, the record remains open until it is considered complete and ready to be presented to the Commission to issue a final agency decision with respect to the appeal.

provide a complete record pertaining to the removal to this agency, and that it did not receive the 20-day letter providing notice of the appeal. The appellant states that the appointing authority requested an opportunity to file its submissions, despite that he had not provided any arguments at that point. The appellant contends that, in order to prevent the appointing authority from supplementing and/or altering its previous submissions with respect to the removal, he requested to receive all documentation from the appointing authority with respect to the removal before providing his submissions, which was denied. Moreover, the appellant asserts that his attorney requested various extensions prior to submitting the arguments, which were granted, and he acknowledges that the appointing authority submitted its arguments in response to the appeal.

Additionally, with respect to the submissions, the appellant asserts that, at the appointing authority's request, DARA "flipped" the order of submissions and allowed the appointing authority to file its submissions, which appeared to expand on the basis for the removal after it had the opportunity to review the appellant's arguments.[7] The appellant explains that the appointing authority had, in fact, been notified by way of the 20-day letter that the appeal was pending, and the appointing authority provided documentation pursuant to Title 4A of the administrative code after the appeal was filed. As such, the appellant argues that the way the instant appeal has been addressed is in contravention of his rights pursuant to Civil Service law and rules.

The appellant further argues that he is a disabled veteran on the subject certification, which mandates his appointment. As such, the appellant maintains that, based on his veteran's preference, he was improperly removed based on his unsatisfactory employment record. The appellant contends that there is no substantive information to establish that it was necessary to remove him, and he has reasonably explained the circumstances surrounding his removal to the appointing authority in the application, the interview process, and in this appeal. The appellant states that his character and integrity could have been verified if the appointing authority had contacted the individuals who wrote letters of recommendation for him.[8] The appellant argues that the appellant's termination from the Port Authority occurred seven years ago, and the appointing authority did not possess all of the information pertaining to his termination in order to make the determination with respect to his removal. The appellant adds that the appointing authority did not adequately assess his military accomplishments, leadership skills, consider that he graduated with honors from college, and that he is raising children.[9] The appellant

[7] It is noted that the appellant did not submit any arguments until October 18, 2021, as the appellant's attorney had previously requested various extensions as noted above. The appointing authority provided its reply on October 28, 2021.

[8] The appellant contends that he provided the names of such witnesses to the appointing authority, including from his employers, community leaders, and military leaders, and it did not contact those individuals to verify those claims.

[9] The appellant adds that he is also involved with numerous charity and volunteer activities.

contends that, rather than focusing on his accomplishments, the appointing authority inappropriately focused on the isolated incident where he was terminated from the Port Authority. As such, the appellant states that, based on his veteran's preference and his accomplishments as noted above, there was not a sufficient basis to remove him.

Moreover, the appellant argues that it is also violative of his due process rights for the appointing authority to have expanded and broadened the bases for the removal, after the appellant has refuted the appointing authority's reasons for removal in this matter. The appellant maintains that the appointing authority has failed to provide any statutory or regulatory authority which allows it to expand and broaden the basis for the removal, which is even more inappropriate in light of the fact that the appointing authority was in possession of all documentation that it now relies upon with respect to the removal. The appellant contends that the appointing authority "invented" further reasons to justify the removal since it could not provide reasonable explanations in response to the appellant's arguments, and it appears that DARA staff assisted the appointing authority with such action when it "reversed" the order of the submissions. As such, the appellant maintains that the appointing authority's inappropriate submissions should not be considered.

The appellant asserts that, while *N.J.S.A.* 11A:4-11 precludes an automatic removal for criminal offenses, the appellant was removed from the list despite that he was not charged with any criminal offenses. In support, the appellant cites to *In the Matter of David Arce* (MSB, decided November 17, 2004) and *In the Matter of Angelo Magarelli* (CSC, decided January 13, 2010) in which the appellants in those matters were restored to their eligible lists. The appellant states that, although the candidates in *Arce* and *Magarelli* were not veterans, their appointments were not mandated. The appellant maintains that, unlike the situation in the aforementioned matters, his appointment was, in fact, mandated in this matter. The appellant adds that the removals in *Arce* and *Magarelli* were reversed, in part, since their incidents were "isolated," there was evidence of rehabilitation, and the remoteness of the incident. In this matter, the appellant argues that his termination was an isolated incident, was remote in time, and his accomplishments show evidence of rehabilitation. The appellant adds that he was not charged or investigated for a crime after being terminated as a PPO, and based on his above noted accomplishments, the removal was arbitrary.

Additionally, the appellant argues that there is no indication in the investigation report that the appellant was provided with the opportunity to respond to the Port Authority's allegations. The appellant argues that reliance on unfounded accusations is improper, and the information from the Port Authority is violative of his due process rights. In this regard, the appellant argues that, notwithstanding his objections, the appointing authority relies on double and triple hearsay by referring to the Port Authority's investigation report, since it paraphrases text messages that

were not contained in the investigation report. The appellant states that upon filing the instant appeal, he obtained for the first time the Port Authority's investigation report, which claimed that he had coached other officers to lie about being intoxicated during the August 2014 party. The appellant explains that when the appointing authority produced the documents in this matter in support of the request to remove him from the hiring list, only portions of the investigation report were provided,[10] and he was not provided with the opportunity to address the text messages at the time the Port Authority conducted its investigation. As such, the appellant maintains that the appointing authority is now addressing the texts messages out of context of how they occurred.[11]

The appellant further states that he honestly answered the questions on the employment application. The appellant contends that, in response to the questions on the employment application pertaining to if he had ever been subjected to disciplinary action in connection with his employment, he responded "yes." The appellant adds that with respect to the termination from the Port Authority, he stated that he was not administratively charged prior to being terminated from employment

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[10] The appellant states that he did not obtain the Port Authority's investigation report until after he was terminated and received it in response to the appeal in this matter.

[11] The appellant states that, in the Port Authority's report, the investigators asserted that a group chat occurred on September 6, 2014, where the appellant stated to his fellow officers to, "Remember as public servants, we are never to be intoxicated, we can drink but we are never to be intoxicated since we graduated … may want to subtlety explain this to our fellow officers in casual conversations in person." It follows this up in its report that in the same group chat he reiterated a similar statement on September 10, 2014, where they quoted him as saying "just remember no one was intoxicated." He argues that the Port Authority utilized these edited and out of context statements in their report to falsely imply that he had stated to them to coach fellow officers in some way. However, he contends there are several discrepancies, inaccuracies, and purposeful omissions in that implication. First the September 6, 2014, text took place several days prior to any notification that there was to be an official investigation into the events of the graduation party. Second, the time and date of the text was two weeks prior to any official notification that any members of the group chat would be called upon to answer questions as part of the investigation. On September 6, 2014, the group chat included 12 participants and, of those 12, other than himself, only three were present for the graduation party that was subject to the investigation. To the best of his knowledge, none of the three officers in the group chat had any involvement in the alleged incidents. One chat occurred between multiple officers discussing drinking and being intoxicated, or expressing wishes and plans to get drunk, it also includes pictures of individuals drinking alcohol on September 6. He explains that his statement was a direct response to their interactions and posts. His intention was to humorously remind them that they should be mindful of their social media posts and to not excessively drink. In jest, he singled out one of the older officers to explain it to a younger officer in person. The entirety of the content of the conversation seems to be purposefully omitted by the Port Authority to create a false narrative against his character and behavior. To support the implication of coaching officers for their interview it submitted an absolute false reference stating that he additionally commented in the group chat on September 10, to remember no one was intoxicated. The statements referenced by the Port Authority of the group chat he participated in on September 6 and September 10, 2014, were never brought to his attention during the investigation, and he was not questioned about them. If these statements had been brought to his attention during the investigation, he would have been able to provide a reasonable explanation with documentation to avoid any negative implications or false narratives concerning his behavior and character.

as a PPO. The appellant adds that he was not present for any of the incidents that transpired during the August 2014 graduation party, that resulted in the investigation which was conducted.[12] The appellant states that, with respect to the incident where he kicked the restroom door during the graduation party, he disagrees with the appointing authority's characterization of that incident.[13] The appellant adds that he was unaware that the Port Authority's investigation addressed the matter regarding him kicking the door. Further, the appellant argues that, with respect to the contention that he had completed an 11 mile run prior to completing training, he decided to complete the run rather than withdrawing from training.[14] The appellant states that, although the appointing authority inaccurately indicates that he had no cartilage in his left knee, the appellant maintains that he had a torn meniscus at the time of the 11 mile run.[15] Moreover, the appellant asserts that he had no intention to obstruct the investigation with respect to the August 2014 party. The appellant acknowledges that, although he had a conversation with another PPO pertaining to what occurred at the time of the August 2014 party, he only stated to the officer that he should tell the truth to the investigators.[16] Moreover, the appellant contends that he has been gainfully employed since his termination from the Port Authority, and seven years have passed since that time.[17] The appellant asserts that he has provided evidence of his rehabilitation, including that he obtained a Bachelor's degree, has a family, and he served in the military.[18] The appellant states that the above noted accomplishments evidences rehabilitation which mitigates the reasons used to remove him from the subject list. Moreover, the appellant asserts that he has

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[12] The appellant states that, at the time of the investigation, it was conveyed to the PPOs that the Port Authority was requesting information pertaining to the alleged incidents that occurred that evening involving an assault, an altercation between Port Authority officers and supervisors, theft of property, theft of services and destruction of property. The appellant states that he was not present when the Hoboken Police responded to the incident.

[13] The appellant explains that, at the time of the incident, he smelled a stench emanating from the restroom, and as such, he kicked the restroom door in order to avoid touching the door with his hands. The appellant explains that a bouncer noticed the sound that was made when the door was kicked open, and in response, the bouncer asked the appellant leave the premises. The appellant adds that bouncer reconsidered his position and allowed the appellant to stay for the duration of the party. Although the appellant states that the bouncer asked the appellant several questions, he does not indicate what questions were asked of him. However, he contends that he informed the bouncer that he did not intentionally push the door open.

[14] The appellant states that he was concerned that the Port Authority would not allow him to attend another training, since he would be beyond the age it allows candidates to participate in such trainings.

[15] The appellant states that, when faced with withdrawing, he wore a brace to assist him with the injuries during training. The appellant does not provide any medical evidence with respect to the injuries he claims to have sustained at the time of training. The appellant adds that his union representative advised him not to undergo surgery for his injuries, as doing so might violate the Port Authority's leave policy, and that he should avoid withdrawing.

[16] The appellant contends that he was the oldest PPO and he wanted to ease the younger PPOs' concerns.

[17] The appellant states that he was not disciplined by those employers.

[18] The appellant states that he served in the Marines where he received various commendations.

learned from his mistakes and has moved on from any lapse of judgement that occurred.

In support, the appellant provides letters of recommendation, military discharge papers, and copies of his educational transcripts.

In response, the appointing authority, represented by Benjamin D. Leibowitz, Esq., asserts that, although the appellant is listed on the subject certification as a disabled veteran, that status does not mandate that he should not have been removed from the list. The appointing authority contends that veterans, whether disabled or not, are not required to be appointed when there are grounds to justify the removal. The appointing authority states that, although the appellant considers the removal in this matter as based on a remote termination from employment, that information was sufficient to remove his name from the eligible list. The appointing authority adds that the names of the witnesses the appellant provided on appeal to verify his character are not sufficient to warrant the restoration of his name to the list. The appointing authority adds that it obtained evidence from the Port Authority pertaining to his character and establishing his unfitness for an appointment as a Police Officer.[19] The appointing authority asserts that the appellant's dishonesty and unsatisfactory character evidences his unsuitability to become a law enforcement officer, which was confirmed by his involvement in coaching other PPOs to lie about being intoxicated at the time of the August 2014 incident. In this regard, the appointing authority maintains that the appellant urged the other PPOs to provide elusive, non-responsive and untruthful answers. The appointing authority adds that the appellant's action of instructing the other PPOs to further advise additional PPOs about what to say is additional evidence that shows he is unfit to serve as a Sheriff's Officer. As such, the appointing authority states that the appellant's explanation for his behavior attempts to conceal his misconduct by violating an order related to the Port Authority's Internal Affairs investigation, and that he interfered with such

[19] The appointing authority explains that, in addition to the previous information that it provided to this agency, the appellant was also involved in the following incidents: On September 22, 2014, a memorandum from the Office of Inspector General, Port Authority, indicated that, "Effective September 19, 2014, Probationary Police Officer [the appellant] was placed on administrative suspension" to be served "in the Administrative Work Chart (*i.e.*, day tours Monday through Friday at Newark Liberty International Airport until further notice;" on October 8, 2014, a PIU Investigative Action Report issued by the Port Authority indicated that, "On September 19, 2014 … immediately following a subject interview, Probationary Police Officer [the appellant] was informed by a Lieutenant … that he was being placed upon Administrative Suspension as a result of failing to follow a direct order issued to him at the conclusion of a PIU interview …;" on October 20, 2014, a memorandum from the Office of the Inspector General, entitled "Port Authority, 113th Police Recruit Class/Texas Arizona Bar and Grill Incident - … "[the appellant's] lack of candor during PIU interviews," indicates that it was confirmed in [social] media posts by [the appellant] on September 6, 2014 and September 10, 2014, [that] he coached fellow officers [about] what to say to avoid admitting to their intoxication at their graduation bash at the Texas Arizona bar on August 23 and 24, 2014, and to advising PPOs to remind other fellow PPOs of this "in private casual conversation in person, telling them to advise others to … just remember that no one was intoxicated."

investigation. The appointing authority asserts that the appellant understood that the Port Authority ordered him to not discuss the interview with the other PPOs, and he was suspended and terminated as a result of his action of violating that order. The appointing authority adds that the appellant admitted that he had a conversation with a PPO regarding the contents of the PIU interview,[20] and as a result, the Port Authority found that the appellant's actions constituted misconduct as a result of violating the direct order.

Additionally, the appointing authority contends that the appellant listed on the employment application that the reason for his discharge from the Port Authority was for "failure to meet probationary standard, not for cause." The appointing authority states that the reason provided is misleading, as it conceals that he violated an order with respect to the Internal Affairs investigation, and that he interfered with that investigation. The appointing authority adds that, since the appellant's employment as a PPO was terminated as a result of his misconduct, such disciplinary action should be considered "for cause," even if the charges against him did not explicitly indicate that information.

The appointing authority maintains that the appellant's assertions that he honestly answered the questions on the employment application is false. Further, the appointing authority disagrees with the appellant's statement that "he has always been upfront and honest of what he experienced and what transpired on the night of the alleged incidents." In this regard, the appointing authority contends that, if the Port Authority believed his explanations with respect to the incident, it would not have suspended and terminated him for misconduct, but rather, it would have offered him a lesser disciplinary offense similar to what the other PPOs received in response to the incident, *i.e.,* a 30-day suspension and an extension of their probationary employment status. The appointing authority asserts that, with respect to the positive references and accomplishments he submits in this matter, such information does not overcome the inexcusable misconduct he was involved with while he was employed as a PPO.

The appointing authority further argues that the appellant also seeks to improperly expand the factors outlined in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)1. The appointing authority states that such consideration is discretionary, as the statute and regulation state that the factors "may be considered in determining whether a criminal conviction adversely relates to the employment" and

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[20] The appointing authority indicates that, when the appellant was asked if he told the PPO what any of the questions were, the appellant responded, "I don't remember the conversation … I did mention that all the questions pertained to whatever rumors were going on about the party." The appointing authority states that when the appellant was asked if he was able to recall any specific questions he related to the PPO, the appellant stated, "Yes, I spoke to him about whatever rumors were discussed throughout, before the interview … there was an issue with a knife. There was an issue with beer being stolen."

disqualification as provided by *N.J.A.C.* 4A:4-6.1. The appointing authority contends that, even if the factors outlined were considered in this matter, due to the seriousness of the appellant's misconduct, considering the appellant's references would be irrelevant in this matter. Moreover, the appointing authority states that *Arce* and *Magarelli* are factually distinguishable from this matter. The appointing authority states that in *Arce,* the facts of that matter were that he was young at the time he was arrested and the matter was an isolated incident. In *Magarelli,* that matter involved a youthful indiscretion involving an isolated incident where the appellant in that matter provided a false police report, and at the time of the incident, he was not a sworn Police Officer. In this matter, the appointing authority explains that the appellant served in the Marines prior to being hired at the Port Authority, where he learned what it meant to receive an order and to comply with such. It adds that the appellant's conduct at the time of the incident is not consistent with the honesty, truthfulness and integrity that is required to perform law enforcement work, and his insubordination and encouragement of the other PPOs to provide false testimony was done after he graduated from the Police Academy and was serving as a PPO. The appointing authority states that such behavior is not consistent with the public's expectation of law enforcement officers, and the appellant, if appointed would disrupt its ability to provide effective services to the public. Moreover, the appointing authority maintains that the appellant's purported accomplishments since his termination from the Port Authority does not establish that he should be restored to the list, as such accomplishments do not overcome the misleading statements on the employment application and as submitted in his appeal in this matter.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought.

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:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows for the removal 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. *See also, N.J.A.C.* 4A:4-4.7(a)11.

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. *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.

In this matter, the appointing authority maintains that the appellant has an unsatisfactory employment record, as it was alleged that he encouraged other PPOs not to disclose to the Port Authority's investigators what occurred with respect to the subject matter of an internal affairs investigation in violation of a direct order, charged with interfering with the Port Authority's internal affairs investigation, and suspended and terminated from his position as a PPO as a result of the aforementioned administrative charges. The appellant argues that he was removed from his position as a PPO in November 2014, and seven years have passed since that time and the filing of the appeal in this matter. The appellant argues that he is a disabled veteran, and that status mandates his appointment from the subject list. A review of the record reflects that the appellant was administratively charged, suspended, and terminated from his position as a PPO in November 2014. Such an employment background is clearly sufficient to remove the appellant from the subject list. Although the appellant is listed on the subject certification as a disabled veteran, his arguments that he should be appointed to the list on that basis are misplaced. The appellant's status as a disabled veteran does not automatically guarantee an appointment. The appointing authority is authorized to conduct a background investigation for the candidates who appear on a certification, which includes background checks for disabled veterans. If, as occurred here, an appointing authority obtains adverse information indicating that it is appropriate to remove an eligible's name from the list, even if the eligible is a disabled veteran, the appointing authority has the authority to do so. It is noted that, with limited exception, the only method by which an individual can achieve permanent appointment is if the individual applies for and passes an examination, is appointed from an eligible list, and satisfactorily completes a working test period. The steps necessary to perfect a regular appointment, include, but are not limited to, this agency's review and approval of a certification disposition proposed by an appointing authority and the employee's completion of a mandatory working test period. *See In the Matter of Joseph S. Herzberg* (MSB, decided June 25, 2003) (Intent of appointing authority to permanently appoint appellant to Fire Captain not sufficient to permanently appoint appellant since he was never appointed from an eligible list). Indeed, *N.J.A.C.* 4A:4-1.10(a) provides that all appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval of the Commission. It is settled that an appointment is not valid or final until it is approved by the Commission. *See Thomas v. McGrath,* 145 *N.J. Super.* 288 (App, Div. 1976) (Morgan, J.A.D. dissenting), *rev'd* based on dissent, 75 *N.J.* 372 (1978); *Adams v. Goldner,* 79 *N.J.* 78 (1979); *In the Matter of Reena Naik* (MSB, decided February 28, 2007). Moreover, the appearance of the appellant's name on the subject list did not guarantee his appointment, as the only interest that results

from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel,* 244 *N.J. Super.* 494 (App. Div. 1990).

With respect to the appellant's arguments that he was not administratively charged prior to being terminated from his position as a PPO, such arguments are of no moment. The record clearly reflects that, based on the results of the Port Authority's internal affairs investigation, the appellant was suspended and terminated from his position as a PPO. Although the appellant states that he was not present for any of the incidents that occurred that were the subject of the internal affairs investigation, the Commission is not persuaded. The appellant acknowledges that he was at the graduation party in August 2014 where he kicked a door, was questioned by a bouncer, and he acknowledges that he was subsequently involved in conversations with other PPOs pertaining to what occurred when he was questioned during the Port Authority's investigation. The investigation also confirmed that the appellant instructed the other PPOs to "just remember no one was intoxicated." The record also reflects that the Port Authority notified the appellant that he was suspended and terminated. As such, the Commission is satisfied that the appellant was notified of his adverse separation from his position as a PPO, and for what reasons. Moreover, the appellant's argument on appeal that, the outcome of his termination from his position as a PPO would have been different had he been provided with the investigation report from the Port Authority prior to his termination, does not change the outcome of this matter. Although the appellant claims that he received the investigation report for the first time at the time he filed the instant appeal, other than his claims, he has not provided any substantive evidence in support of that assertion. Even if the appellant did not receive the investigation report from the Port Authority as he claims, such information does establish his claims in this case, and does not change the fact that the information in the record indicates that he was terminated from his position as a PPO. Moreover, as a law enforcement candidate, the appellant's removal as a PPO, clearly adversely relates to the employment sought. Municipal Police Officers are law enforcement employees who 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 appellant's employment history is inimical to that goal.

With respect to the appellant's claims that he has been rehabilitated since the time of his termination as a PPO, such information is not applicable in this case. Initially, rehabilitation is only used, per *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)1, when the removal from a list is based on **criminal charges.** Since the appellant was not removed based on criminal charges in this matter, the aforementioned law and

rules pertaining to rehabilitation do not apply.[21] With respect to the information he provides on appeal pertaining to the letters of recommendation, military service, raising a family, and his education, such information is insufficient to overcome his unsatisfactory work history, especially given that the position is in law enforcement. Regardless, each matter is evaluated on its own merits and, considering the factors present in this matter, the appellant's removal from the list based on an unsatisfactory employment record is warranted. As such, the appellant has not met his burden of proof in this matter.

With respect to the falsification issue referred to by the appointing authority on appeal, the appointing authority argues that, in response to question 52 on the employment application, "Were you ever subjected to disciplinary action in connection with any employment," the appellant answered "yes," and indicated "see page 24 for statement." The statement indicates that, "While I was a probationary at will employee with the Port Authority … an investigation was conducted by the Port Authority … for incidents that occurred during a recruit graduation party … while I attended the party, I was not present at the time the incidents occurred and had no first hand knowledge of the incidents … while it was determined that I was not involved or present at the time of the incidents, I was terminated due to my probationary status without cause." As noted above, the record reflects that the appellant was terminated from the Port Authority for cause. As such, it is clear that the appellant did not properly complete the employment application. While the Commission need not determine whether this constitutes falsification under the rules as there is sufficient cause for the removal based on employment history, it must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Sheriff's Officer, 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).

With respect to the appellant's contention that DARA staff "flipped" or "reversed" the order of submissions and allowed the appointing authority to provide additional information in response to the appeal, the Commission finds those arguments are without merit. The record reflects that the appellant filed the appeal

[21] Similarly, the appellant's citations to prior Commission cases are inapplicable, as those matters were list removal appeals based on prior criminal charges.

on April 28, 2021, and he requested a 30-day extension at that time, and the appellant's attorney requested three additional extensions to October 18, 2021. The record reflects that, by letter dated June 9, 2021, the appellant's attorney requested all documentation provided by the appointing authority with the respect to the appellant's removal, which was provided to her. Although an August 4, 2021 20-day letter was sent to the parties which provided them with notice of the appeal, the appointing authority indicated by way of an October 14, 2021 e-mail that it did not receive the 20-day letter. As such, the August 4, 2021 20-day letter was provided to the appointing authority by e-mail on October 14, 2021, which provided it with notice of the appellant's appeal. Although a procedural error occurred with respect to the appointing authority's receipt of the 20-day letter, the appointing authority was not mandated to respond within 20-days of its receipt of the August 4, 2021 20-day letter. Rather, a record remains open for the parties to respond until it is considered complete for the purposes of issuing a Commission decision. In this regard, what is most important in a matter before the Commission, is that a full and complete record is established. To accomplish that, Commission staff will allow parties to fully submit their arguments and documentation. Such a record affords the Commission the ability to make a fully reasoned final determination. Moreover, any procedural irregularities do not establish that the appellant was improperly removed from the list, or that the instant appeal was improperly addressed by the Commission.

Finally, extensions are not regulated by this agency and therefore, such requests are not required to be granted to the parties. Rather, extensions are granted by DARA staff as a courtesy to the parties on an as needed basis, in an effort to have the parties provide additional information to complete the record, so the Commission may issue a final determination. Suffice it to say in this matter, both parties were afforded full opportunities to present their positions.

Accordingly, the appointing authority has presented sufficient cause to remove the appellant's name from the eligible list for Sheriff's Officer (S9999A), Middlesex County.

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 27TH DAY OF APRIL 2022

Deirdré L. Webster Cobb

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Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries and Correspondence

Allison Chris Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Dominick Dellagrazie
Catherine M. Elston, Esq.
Benjamin D. Leibowitz, Esq.,
Patrick Gallagher
Agency Services
Records Center