

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4913-15T2

IN THE MATTER OF
HARRY TISCH, BUILDING
MANAGEMENT SERVICES
SPECIALIST 2 (S0902S),
DEPARTMENT OF MILITARY AND
VETERANS' AFFAIRS.

Argued December 12, 2017 – Decided April 4, 2018

Before Judges Sumners and Moynihan.

On appeal from the Department of Military and
Veterans' Affairs, Civil Service Commission,
CSC Docket No. 2016-3267.

Steven W. Griegel argued the cause for
appellant Harry Tisch (Roselli Griegel Lozier
& Lazzaro, PC, attorneys; Steven W. Griegel,
on the brief).

Christopher J. Hamner, Deputy Attorney
General, argued the cause for respondent New
Jersey Department of Military and Veterans'
Affairs (Christopher S. Porrino, Attorney
General, attorney; Jason W. Rockwell,
Assistant Attorney General, of counsel;
Christopher J. Hamner, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent Civil Service
Commission (Pamela N. Ullman, Deputy Attorney
General, on the statement in lieu of brief).

PER CURIAM

After taking a written civil service test and being interviewed, Harry Tisch, a disabled veteran, was first on the eligibility list for the position of Building Management Services Specialist 2 (S0902S) with the Department of Military and Veterans' Affairs (DMVA). Tisch, however, was subsequently removed from the eligibility list when the DMVA determined that he falsified his application for the position. The Civil Service Commission (Commission) denied his appeal of the DMVA's action.

Before us, as he did before the Commission, Tisch admits that the application and resume (collectively, documentation) he submitted to the DMVA failed to include his almost two months of employment at the Department of Treasury (DOT),¹ which had concluded approximately eight months earlier.² The time period he was employed at DOT was incorrectly attributed to working at the New Jersey Housing and Mortgage Finance Agency (HMFA).³ In his

¹ According to DOT's records, Tisch worked at the DOT from March 23, 2015 until May 15, 2015, when he resigned prior to finishing his working test period. The DMVA viewed a resume that Tisch posted on a job search website as well, which also did not include his DOT work experience.

² Tisch submitted his documentation for employment at the DMVA on January 5, 2016.

³ His application stated he was employed by HMFA from March 2015 to June 2015, whereas his resume provided he was employed at HMFA from March 2015 to September 2015. There were also discrepancies

defense, Tisch claims he did not intend to deceive the DMVA as evidenced by self-correcting his accidental "oversight" when he informed the DMVA of his DOT work history within four days of submitting the documentation.⁴ Thus, he argues the Commission's decision was arbitrary and capricious, and was based upon erroneous facts. Having reviewed the record, we affirm, substantially for the reasons stated by the Commission in its written decision. We add the following comments.

The scope of appellate review of an administrative agency's final determination is limited. In re Stallworth, 208 N.J. 182, 194 (2011). In determining whether an agency action is arbitrary, capricious, or unreasonable, we must make three inquiries: (1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion. Ibid.

When an agency satisfies this standard of review, we must give "substantial deference to the agency's expertise and superior

regarding the dates he was employed at the Department of Community Affairs (DCA), the job he held at the time he applied to DMVA.

⁴ At the same time, Tisch advised the DMVA of the correct last name of one of his references.

knowledge of a particular field." In re Hermann, 192 N.J. 19, 28 (2007). We must defer even if we would have reached a different result. In re Carter, 191 N.J. 474, 483 (2007). In short, we are not permitted to substitute our judgement for that of the administrative agency. Barrick v. State, 218 N.J. 247, 260 (2014). Finally, there is a "strong presumption of reasonableness [that] attaches to the actions of the administrative agencies." In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001).

With these principles in mind, we discern no basis to overturn the Commission's decision approving the removal of Tisch from the eligibility list. Under the Commission's regulations, a person who makes "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:4-6.1(a)(6) (emphasis added), may be removed from an eligibility list. N.J.A.C. 4A:4-4.7(a)(1). The burden of proof rests on Tisch to show that the DMVA's decision to remove his name from the eligibility list was in error. N.J.A.C. 4A:4-4.7(d).

We reject Tisch's argument that his initial oversight in excluding his DOT work experience in his documentation seeking employment with the DMVA was not a basis to remove him from the eligibility list. His documentation contained the false statement that he worked at HMFA when he was actually working at DOT. Under

N.J.A.C. 4A:4-6.1(a)(6), this is clearly a "false statement of [a] material fact." We agree with the Commission that "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." And we take no issue with the Commission's finding that Tisch's employment history was a "material fact" under the regulation.

The Commission's interpretation of N.J.A.C. 4A:4-6.1(a)(6) indicates that the Commission need not show, as Tisch contends, that he intended to deceive the DMVA when he falsely stated his work history. The regulation provides that, by use of the disjunctive "or" after "a false statement of any material fact," there are two exclusive grounds upon which a person can be removed from the eligibility list - for "attempted . . . deception or fraud." N.J.A.C. 4A:4-6.1(a)(6) (emphasis added); see Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344, 368 (2007) (recognizing that "or" is read typically as a disjunctive, and only in the conjunctive to reasonably effectuate legislative intent) (citation omitted); see also Headen v. Jersey City Bd. of Educ., 212 N.J. 437, 451 (2012) (applying the same rules of construction for statutory interpretation to interpretation of regulations) (citation omitted). That said, the Commission went

on to determine that Tisch attempted to deceive the DMVA by reasoning:

In this case, it is difficult to believe that [Tisch] simply forgot to put his experience with [DOT] on his application and resume and mistakenly put the wrong dates regarding his experience with HMFA and DCA on his application and the wrong dates regarding his experience with HMFA on his resume when these positions were held within one year of submitting his application and resume with [DMVA].

Tisch has not persuaded us to disturb this finding.

Accordingly, Tisch has not met his burden, and the Commission's decision is fully supported by substantial and credible evidence in the record.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.


CLERK OF THE APPELLATE DIVISION