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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0565-21

IN THE MATTER OF  
CHRISTOPHER DUNLAP,  
FIRE FIGHTER (M1838W),  
TOWNSHIP OF HILLSIDE.

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Argued January 23, 2023 – Decided February 3, 2023

Before Judges Whipple and Smith.

On appeal from the New Jersey Civil Service  
Commission, Docket No. 2021-1818.

Kenneth B. Goodman argued the cause for appellant  
Township of Hillside (O'Toole Scrivo, LLC, attorneys;  
Kenneth B. Goodman, on the briefs).

Brian P. Matousek argued the cause for respondent  
Christopher Dunlap (Grayson & Associates, LLC,  
attorneys; Bette R. Grayson, on the brief).

Matthew J. Platkin, Attorney General, attorney for  
respondent Civil Service Commission (Craig S. Keiser,  
Deputy Attorney General, on the statement in lieu of  
brief).

PER CURIAM

Hillside Township appealed after the Civil Service Commission (CSC) issued a final order reversing its removal of respondent from the list of eligible persons for the position of firefighter. Respondent failed to include a 2007 juvenile charge of resisting arrest on his application for the position. The Township, acting in its capacity as the appointing authority, found respondent's omission constituted a material misrepresentation and removed respondent's name. The CSC reversed, finding the omission not material because respondent supplied sufficient information to enable the Township to properly complete its background investigation of respondent.

On appeal, Hillside Township argues the Commissioner's final decision was arbitrary, capricious, and unreasonable, and should be reversed. We affirm.

#### I.

Christopher Dunlap (Dunlap) took the CSC open competitive examination for the position of fire fighter. He attained a passing score and as a result he was placed on the eligible list. Respondent's name was certified to the appointing authority, Hillside Township (Township).

Dunlap completed the Township's application for employment form, including question two in the "Arrests, Summonses, Criminal History" section. The question asked, "Have you ever been arrested for or charged with juvenile

delinquency?" Dunlap answered "yes." When next asked to "complete details with dates, age at time of offense, violation type, location, and disposition," he answered, "October 30, 2006, 17 years old, possession of weapon for unlawful purpose, Hillside High School, Community Service, DNA testing ordered." Question three asked "Have you ever been arrested for, indicted for, or convicted of any violation of the criminal law?" Dunlap answered "yes." In response to a request for "complete details with dates, age at time of offense, violation type, location, and disposition," Dunlap answered, "[j]uvenile arrest reference answer to number 2."

Question nine stated "Use the space below to provide us with any other related information." Dunlap replied:

#2 Continued:

Fingerprinting ordered, write a letter and forfeit weapon.

On Monday October 30, 2006, my pocket knife[,] which I use on the weekends to help my uncle open boxes on his trucking route[,] fell out of my pocket. The security guard by the name of Melvin witnessed the knife fall and his response was "come on let's go to the office, you are getting in trouble". Being as though school was already let out I was attempting to leave the building. Melvin tried to detain me with the help of detective Wilson. I was pinned to the ground and hand cuffed. It was an honest mistake, I forgot it was still in my pocket, it was not a regular occurrence for me to carry a knife. Although it was classified as a weapon

my reasons for carrying a pocket knife was never supported by thoughts of trying to cause harm or violence to anyone. As a child who had just lost his mother and no father present working on the weekends with my uncle was very imperative to my survival. [T]rying to juggle being an employee, a student, and an athlete it slipped my mind and I truly forgot it was in my pocket.

Upon further investigation, Hillside Township learned the high school incident led to Dunlap's being charged with the following offenses: resisting arrest; possession of a weapon in an educational institution; aggravated assault; and possession of a weapon for an unlawful purpose. Ultimately, the other charges were dismissed, and Dunlap's juvenile record reflects only the possession of a weapon for an unlawful purpose disposition.

The Township, acting in its capacity as appointing authority, removed Dunlap from the list of eligible candidates, finding that by omitting the dismissed charges, he made a false statement of material fact in his employment application.

Dunlap appealed the Township's initial decision to the CSC. He argued the incident happened almost fifteen years prior to his application, and he pointed out the additional charges filed against him were dismissed. After reviewing the record, the CSC made findings and concluded the Township failed to demonstrate Dunlap made a false statement of material fact in his application.

The CSC found Dunlap's answers to questions two and three on the employment application supplied information sufficient to enable the Township to "properly complete [its] background investigation." While the police report contained additional information not in Dunlap's application, the Township was able to obtain the report based on the information he provided. Hence, the CSC was not persuaded on the record before it that Dunlap made a materially false statement in his employment application.

The CSC also found the incident, which took place when Dunlap was a juvenile, to be an isolated one. Finding Dunlap had not been involved in any other criminal incidents, the CSC concluded the incident was sufficiently remote in time to declare him rehabilitated.

The CSC issued a final decision, reversing the Township's removal of Dunlap from the list. The CSC ordered that the firefighter's list be revived, and Dunlap's name be "certified at the time of the next certification for prospective employment opportunities only."

The Township appealed, contending the CSC's final decision was arbitrary, capricious, and unreasonable, and not supported by the substantial credible evidence in the record.

Judicial review of final agency decisions is limited. Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)).

We will not disturb the determination of the CSC absent a showing "that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence, or that it violated legislative policies expressed or implicit in the civil service act." Zimmerman v. Sussex Cnty. Educ. Servs. Comm'n, 237 N.J. 465, 475 (2019) (quoting Campbell v. Dep't of Civ. Serv., 39 N.J. 556, 562 (1963)). "When an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28 (2007). "Deference controls even if the court would have reached a different result in the first instance." Ibid.

A reviewing court is not, however, "bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue." Allstars, 234 N.J. at 158 (alteration in original) (quoting Dep't of Child. & Fams.. v. T.B., 207 N.J. 294, 302 (2011)). The party challenging the administrative action bears the

burden of demonstrating that the agency's action was arbitrary, capricious, or unreasonable. Lavezzi v. State, 219 N.J. 163, 171 (2014).

At the outset, we note placement on a civil service eligibility list does not grant the applicant the right to be employed. In re Foglio, 207 N.J. 38, 44 (2011). "[T]he best that can be said' of a candidate on an eligible list is that [the candidate] has 'a right to be considered for appointment.'" Id. at 44-45 (alteration in original) (quoting Nunan v. N.J. Dep't of Pers., 244 N.J. Super. 494, 497 (App. Div. 1990)). We turn to the merits.

The Township contends the core question is whether Dunlap withheld information material to the position he sought to obtain. In support of its position that he did so, the Township maintains Dunlap "made a false statement of material fact on his employment application when he failed to disclose his juvenile arrest . . . ." The Township further posits Dunlap was responsible for providing "full and accurate information" in the application, and that it, as the appointing authority, is not responsible for adding missing details concerning respondent's criminal history. We are not persuaded, substantially for the reasons set forth in the CSC's final decision. We add the following brief comments.

In conjunction with N.J.A.C. 4A:4-6.1, N.J.A.C. 4A:4-4.7(a)(1) permits the removal of an eligible person from an employment list when that individual "[h]as 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:4-6.1(a)(6), or for "[o]ther sufficient reasons," N.J.A.C. 4A:4-6.1(a)(9).

The CSC relied on Dunlap's answers in questions number two and three, as well as his incident narrative in the application. The record shows his answers were sufficiently detailed, including the date and location of the incident, his age at the time, and his juvenile disposition. The CSC found Dunlap's omissions were not material, as respondent had disclosed sufficient information for the Township to properly complete its background investigation.

We cannot conclude the CSC's final decision lacks fair support in the record. Zimmerman, 237 N.J. at 475. Consequently, we defer to the agency. In re Herrmann, 192 N.J. at 27. The Township failed to meet its burden of showing the CSC's decision to be arbitrary, capricious, or unreasonable. Lavezzi, 219 N.J. at 171.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION