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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 03505-18

AGENCY DKT. NO. 2018-02475

**IN THE MATTER OF KRISTIN HYMAN,
HUDSON COUNTY SHERIFF'S
DEPARTMENT.**

Kristin Hyman, appellant, pro se

**Sean P. Carsey, Esq., for respondent (Chasan, Lamparello, Mallon & Capuzzo,
P.C.**

Record Closed: January 11, 2024

Decided: January 12, 2024

BEFORE BARRY E. MOSCOWITZ, CALJ:

STATEMENT OF THE CASE

In August 2015, Kristin Hyman applied to the Hudson County Sheriff's Department to become a sheriff's officer but intentionally and deliberately failed to disclose her prior employment as a dominatrix so she could be hired as a sheriff's officer. Should Hyman be terminated from her employment as a sheriff's recruit? Yes. Applicants to become sheriff's officers in Hudson County must provide any information that might reflect unfavorably on their reputation, morals, character, or ability, and applicants who conceal a material fact may be dismissed if the material fact is discovered after appointment.

PROCEDURAL HISTORY

On May 26, 2017, Hyman was served with a Preliminary Notice of Disciplinary Action. In the notice, Hudson County charged Hyman with conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)(6); neglect of duty under N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause under N.J.A.C. 4A:2-2.3(a)(12). In the notice, Hudson County specified that Hyman intentionally and deliberately failed to disclose her prior employment as a dominatrix, that she knew her prior employment as a dominatrix would be disqualifying as a sheriff's officer, and that she intentionally and deliberately failed to disclose her prior employment as a dominatrix so she could be hired as a sheriff's officer. As a result, Hudson County sought her removal and Hyman was suspended without pay.

On May 30, 2017, Hyman filed a civil action in Superior Court alleging that Hudson County violated the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -14, "based on the notice of disciplinary action suspending [Hyman] pending outcome of a formal hearing," and the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50, "based on [Hyman's] sex and sexual orientation."

On February 1, 2018, after a full departmental hearing, Hyman was served with a Final Notice of Disciplinary Action, which sustained the charges and specifications and removed Hyman from her position as a sheriff's officer, effective February 1, 2018.

On February 20, 2018, Hyman appealed the determination to the Civil Service Commission.

On March 6, 2018, the Civil Service Commission transmitted the case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On June 7, 2019, the Honorable Kimberly Espinales-Maloney, J.S.C., granted Hudson County's motion for summary judgment in the civil action and dismissed Hyman's CEPA and LAD claims with prejudice. In her written decision, Judge Espinales-Maloney found that Hyman lied under oath. More specifically, Judge Espinales-Maloney wrote that Hyman "failed to disclose her prior employment as a dominatrix for hire; the nature of her business; her aliases; her social media history; and also failed to file tax returns."

On September 15, 2022, Hudson County filed a motion for summary decision in this case; on July 11, 2023, Hyman filed her opposition; and on July 31, 2023, Hudson County filed its response.

FINDINGS OF FACT

Based on the documents submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT**:

In August 2015, Hyman applied to the Hudson County Sheriff's Department to become a sheriff's officer. The certification to the employment application notifies Hyman that her employment would be contingent upon a background investigation and that any omission, falsification, misstatement, or misrepresentation would be the basis of disqualification or dismissal. It also notifies Hyman that the background investigation would be based on the information Hyman provided and asked Hyman whether she was aware of any information that might reflect unfavorably on her reputation, morals, character, or ability:

I understand that my appointment or employment will be contingent upon the results of a complete background investigation. I am aware that any omission, falsification, misstatement[,] or misrepresentation will be the basis for my disqualification as an applicant or my dismissal from the Sheriff's Office. I agree to the conditions and certify that all statements made by me on this application are true, correct[,] and complete, to the best of my knowledge.

.....

I agree to conform to the rules, regulations[,] and orders of the Sheriff's Office and acknowledge that these rules, regulations[,] and orders may be changed, interpreted, withdrawn[,] or added to by the Sheriff's Office, at its discretion, at any time and without any prior notice to me. I understand an investigation will be conducted on all of the information listed on this application. Because of this, are you aware of any information about yourself or any person with whom you are or had been closely associated (including relatives, roommates) which might tend to reflect unfavorably on your reputation, morals, character[,] or ability?

[Exhibit B of the Certification of Raymond J. Seigler, Esq., from September 15, 2022.]

In her application, Hyman stated that from January 2006 through October 2013 she was "self-employed by ST Productions," and when asked, "are you aware of any information about yourself [that] might . . . reflect unfavorably on your reputation, morals, character[,] or ability?" Hyman answered, "No."

In support of her application, Hyman also submitted a personal statement, which likewise notifies Hyman that the background investigation would be based on the information Hyman provided:

The position you have applied for is one of tremendous public trust. The purpose of this Candidate's Personal History Statement is to provide data on which a pre-employment background investigation and review will be based. It is very important that you carefully follow the directions and carefully complete the personal history statement.

[Exhibit C of the Certification of Raymond J. Seigler, Esq., from September 15, 2022.]

Moreover, the instruction to the personal statement specifically notifies Hyman that any applicant who makes a false statement, omission, misrepresentation, or concealment of material fact, or who practices or attempts to practice any deception or fraud, may be rejected from the position sought and disqualified for eligibility, and that the candidate may be dismissed from the position obtained if discovered after appointment:

An applicant who has made a false statement, omission, misrepresentation[,] or concealment of material fact, or who practices or attempts to practice, any deception or fraud in securing eligibility for appointment, or applicants who provide answers contrary to official records may be rejected from the position they seek and disqualified for eligibility. Discovery of the aforementioned any time after appointment to the position may result in dismissal from said position.

[bid.]

Finally, the certification to the personal statement, which Hyman signed and notarized, repeats that any misrepresentation, falsification, omission, or concealment could be the cause for rejection before appointment or disqualification after appointment:

I, Kristin Hyman, being duly sworn, do hereby depose and say that I am the above[-]named person and that I have completed the foregoing questionnaire, including additions thereto which appear in the details section and that I understand the contents. I further state that the answers contained herein are complete and correct in every respect. I understand also that any misrepresentation of fact, falsification, omission of material fact, and/or concealment of material facts may be cause for rejection before appointment or disqualification or prosecution after appointment.

[bid.]

In her Personal History Statement, Hyman described ST Productions as a “full-service photography and graphic design” company, and she swore that she had no known aliases.

Believing that ST Productions was a small photography and graphic-design company for individuals who were looking for ordinary photography and webpage design, the officer responsible for conducting the background investigation conducted no further investigation into ST Productions, and with no flags having been raised, the Hudson County Sheriff’s Department offered Hyman employment as a recruit, which Hyman accepted. Exhibit D of the Certification of Raymond J. Seigler, Esq., from September 15, 2022.

In March 2017, before Hyman was scheduled to graduate from the Morris County Police Academy and be sworn in as a sheriff's officer, the Hudson County Sheriff's Department became aware that ST Productions was not an ordinary photography and graphic-design company for individuals who were looking for ordinary photography and webpage design. What Hyman had concealed was the fact that she had been a dominatrix for hire for ST Productions under the alias "Domina Nyx" (which included acts of violence against the individuals who hired her), that ST Productions recorded her performances for sale to the public through her website, and that ST Productions continued to offer her recorded performances for sale through her website. Asserting that Hyman had not been truthful in her application to become a sheriff's officer, the Hudson County Sheriff's Department terminated her employment. Had the Hudson County Sheriff's Department known about the true nature of ST Productions, it never would have hired Hyman as a sheriff's officer. Regardless, the fact remains that Hyman lied in her application because she failed to disclose her prior employment as a dominatrix for hire, the nature of her business, and her alias. Stated otherwise, Hyman intentionally and deliberately failed to disclose her prior employment as a dominatrix, suspected that her prior employment as a dominatrix would be disqualifying as a sheriff's officer, and intentionally and deliberately failed to disclose her prior employment as a dominatrix so she could be hired as a sheriff's officer.

CONCLUSIONS OF LAW

A party may move for summary decision on any or all substantive issues in a case. N.J.A.C. 1:1-12.5(a). Such motions must be served with briefs, and they may be served with affidavits. N.J.A.C. 1:1-12.5(b). A judge may grant a motion for summary decision if no genuine issue of material fact exists, and the moving party is entitled to prevail as a matter of law. Ibid.

In this case, the paperwork to become a Hudson County sheriff's officer requires applicants to provide candid answers to questions asked and complete information on information solicited. To be sure, the paperwork notifies the applicant of this in at least two documents and on at least three separate occasions. First, the certification to the

application explicitly notifies the applicant that any omission, falsification, misstatement, or misrepresentation would be the basis of disqualification or dismissal and that applicants must provide any information that might reflect unfavorably on the applicant's reputation, morals, character, or ability.

Second, the instruction to the personal statement explicitly notifies the applicant that any applicant who makes a false statement, omission, misrepresentation, or concealment of material fact, or who practices or attempts to practice any deception or fraud, may be rejected from the position sought and disqualified for eligibility, and that the candidate may be dismissed from the position obtained if discovered after appointment.

Finally, the certification to the personal statement explicitly notifies the applicant that any misrepresentation, falsification, omission, or concealment could be the cause for rejection before appointment or disqualification after appointment.

Even though this paperwork requires applicants to provide candid answers and complete information, Hyman chose to conceal the true nature of ST Productions, the services it provided, and her role in providing those services by intentionally and deliberately failing to reveal that she had played the role of a dominatrix, recorded those performances, and sold those performances to the public. No genuine issue of material fact exists that Hyman concealed those facts because she suspected that their revelation would reflect unfavorably on her reputation, morals, and character, and that they could be the cause of rejection before appointment. Having found that Hyman intentionally and deliberately failed to disclose her prior employment as a dominatrix so she could be hired as a sheriff's officer, I **CONCLUDE** that Hyman is in violation of N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee), N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty), and N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause), and that Hyman should be removed from her position as a sheriff's recruit with the Hudson County Sheriff's Department as a matter of law.

To be clear, this decision does not remove Hyman as a sheriff's recruit because she had played the role of a dominatrix. This decision removes Hyman from her position because Hyman intentionally and deliberately concealed the true nature of ST

Productions, the services it provided, and her role in providing those services by intentionally and deliberately failing to reveal that she had played the role of a dominatrix, recorded those performances, and sold those performances to the public. Case law imposes a higher standard for law enforcement, see Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966) (“It must be recognized that a police officer is a special kind of public employee. . . . He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public . . .”), for which law enforcement cannot complain, see In re Phillips, 117 N.J. 567, 576 (1990) (quoting In re Emmons, 63 N.J. 136, 142 (App. Div. 1960) (“Nor can a police officer complain that he or she is being held to an unfairly high standard of conduct. Rather, ‘it is one of the obligations he undertakes upon voluntary entry into the public service.’”)), and Hyman failed to meet that higher standard in her new role as a sheriff’s recruit. Had Hyman been candid about her prior employment as a dominatrix, this case would have been a different one with a less certain outcome.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Hyman is removed from her position as a sheriff’s recruit with the Hudson County Sheriff’s Department.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this case. If the Civil Service Commission does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked

"Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 12, 2024

DATE



BARRY E. MOSCOWITZ, GALJ

Date Received at Agency:

January 12, 2024

Date Mailed to Parties:

January 12, 2024

dr