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STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of M.H.,
Police Officer (S9999R), Jersey City

CSC Docket No. 2015-2870

Medical Review Panel Appeal

ISSUED: FEB 14 2017 (BS)

M.H., represented by David J. DeFillippo, Esq., appeals his rejection as a Police Officer candidate by Jersey City and its request to remove his name from the eligible list for Police Officer (S9999R), Jersey City on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on July 28, 2016 which rendered its report and recommendation on September 6, 2016. Exceptions were filed by the appointing authority and cross-exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Guillermo Gallegos (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as having cognitive abilities which were adequate for the position. Dr. Gallegos noted the report of Edward Boylan, M.D., who wrote that the appellant had engaged in agitated and inappropriate behavior during his pre-employment medical examination. As a result of this behavior, Dr. Boylan recommended that the appellant be re-evaluated psychologically. The appellant did not pass this evaluation. Dr. Gallegos reviewed the appellant's employment, legal, social, credit, and mental health history and opined that the appellant presented with "poor stress tolerance, substance misuse, poor integrity, poor judgment, poor impulse control, and poor interpersonal skills." In addition to the incident with Dr. Boylan, Dr. Gallegos noted that the appellant had incurred three legal summonses between 2006 and 2008; two for turnstile jumping and one for having an open container of

alcohol and that he had used marijuana during his recovery from a 2005 motor vehicle accident. Of particular note to Dr. Gallegos was the appellant's score on the Desirable Responding Scale of the Candidate and Officer Personnel Survey (COPS) test, in which the appellant portrayed himself in an overly favorable light. Dr. Gallegos failed to recommend the appellant for employment as a Police Officer.

Dr. Mark White (evaluator on behalf of the appellant) carried out a psychological evaluation of the appellant. Dr. White reviewed the results of the testing done by Dr. Gallegos and conducted a clinical interview. Dr. White opined that the appellant appeared to be a man of superior intellectual potential whose current level of overall functioning was below that potential. However, Dr. White concluded that the appellant did not appear to be experiencing any psychopathology of sufficient magnitude to preclude his functioning as a Police Officer.

The Panel concluded that the negative recommendation found support in the appellant's integrity and psychological functioning. The Panel was concerned about the findings of "poor stress tolerance, substance misuse, poor integrity, poor judgment, poor impulse control, and poor interpersonal skills" pointed out in Dr. Gallegos' evaluation. Additionally, the Panel expressed concern about the appellant's interaction with Dr. Boylan and possible validity issues with some of the testing results. The Panel noted that the appellant's evaluator, Dr. White, opined that the results of Dr. Gallegos' own testing data did not support his conclusions. The Panel made note of the appellant's disqualification from other law enforcement agencies, including the Pennsylvania State Police, but the Panel did not view these previous disqualifications or use of substances eight years ago and having three summonses in his record as being indicative of an ongoing psychological issue which would disqualify him from the subject position. Likewise, based on the account of Dr. Boylan of the previously related incident, including the circumstances which related to that incident, the Panel opined that this one incident did not rise to the level of disqualification. The Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, do not indicate that the candidate is mentally unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. The Panel recommended that the appellant be reinstated to the eligible list.

In its exceptions, the appointing authority, represented by Jeremy Farrell, Corporation Counsel, notes that the appellant was previously disqualified from six other law enforcement agencies: New Jersey State Police, New York Police Department, New York State Police, Port Authority Police Department, Pennsylvania State Police, and the Transportation Security Agency. Its own evaluator, Dr. Gallegos, cited "poor stress tolerance, substance misuse, poor integrity, poor judgment, poor impulse control, and poor interpersonal skills," all of which are the opposite of the qualities necessary in a level-headed, fair, and even-

handed Police Officer. It argues that particularly disturbing was the aggressive and threatening behavior exhibited by the appellant during his physical examination. The appointing authority asserted that Dr. Boylan had never before had to recommend that a candidate be re-evaluated psychologically because of an outburst during the physical examination. The appointing authority argues that the appellant is not psychologically suitable for employment as a Police Officer.

In his cross-exceptions, the appellant asserts that he is a suitable candidate for employment as a Police Officer. The appellant argues that he has not had any adverse interactions with law enforcement since 2008 and that he has been successfully employed for the last eight years as a Security Officer for the Hudson County Sheriff's Office. He contends that he informed Dr. Boylan's staff that he had an allergy to one of the tests to be administered and that no disrespectful or inappropriate behavior on his part was involved.

CONCLUSION

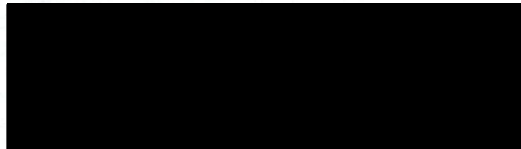
The Civil Service Commission has reviewed the report and recommendation of the Medical Review Panel. The Commission notes that the Panel conducts an independent review of the raw data presented by the parties as well as the recommendations and conclusions drawn by the various evaluators and that, in addition to the Panel's own review of the results of the tests administered to the appellant, it also assesses the appellant's presentation before it prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented. In the instant matter, the Commission does not agree with the Panel's recommendation that the appellant be reinstated to the eligible list. Rather, the Commission finds the exceptions presented by the appointing authority raise legitimate concerns and establish the need for greater clarification concerning the appellant's overall psychological suitability for employment in the subject position. The Commission did not find the appellant's cross-exceptions to be persuasive in this regard and notes that, although the appellant asserts that he has been successfully employed as a Security Officer with the Hudson County Sheriff's Office for the past seven years, individuals seeking employment as a Police Officer are held to a higher standard of personal accountability. Given the multiple potential issues in the appellant's behavioral record, the Commission is not comfortable in ratifying M.H.'s fitness to serve as a Police Officer absent further assurances. Therefore, the Commission finds it necessary to refer this matter for independent evaluation by a New Jersey licensed psychologist. Such an evaluation should address the findings of poor stress tolerance, substance misuse, poor integrity, poor judgment, poor impulse control, and poor interpersonal skills as indicated in Dr. Gallegos' evaluation, his behavior during the physical examination, and explore the reasons for his not being hired by six other law enforcement agencies.

ORDER

The Civil Service Commission therefore orders that M.H. be administered an independent psychological evaluation. The Commission further orders that it is appropriate in this matter to assess the cost incurred for this evaluation to the appointing authority in the amount of \$530. Prior to the Civil Service Commission's reconsideration of this matter, copies of the independent evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross-exceptions.

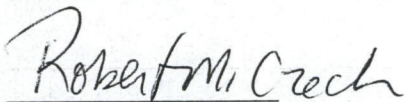
M.H. is to contact Dr. Robert Kanen, the Civil Service Commission's independent evaluator, in order to arrange for an appointment within 15 days of receipt of this order. Dr. Kanen's address is as follows:

Dr. Robert Kanen



If M.H. does not contact Dr. Kanen within the time period noted above, the entire matter will be referred to the Civil Service Commission for final administrative determination and the appellant's lack of pursuit will be noted.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 8TH DAY OF FEBRUARY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
PO Box 312
Trenton, New Jersey 08625-0312

Attachments

c: M.H.
David J. DeFillippo, Esq.
Jeremy Farrell, Corp. Counsel
Kelly Glenn
Beth Wood
