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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of H.S., Fire Fighter
(M2542M), Elizabeth

CSC Docket No. 2016-268

Medical Review Panel Appeal

ISSUED: FEB 14 2017 (BS)

H.S., represented by Stephen B. Hunter, Esq., appeals his rejection as a Fire Fighter candidate by the City of Elizabeth and its request to remove his name from the eligible list for Fire Fighter (M2518M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on September 28, 2016, which rendered the attached report and recommendation on October 24, 2016. No exceptions were filed by the parties.

The report by the Medical Review Panel discusses all submitted evaluations. The test results and procedures and the behavioral record, when viewed in light of the Job Specification for Fire Fighter indicate that the applicant is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. Accordingly, the Panel recommended that the candidate be restored to the eligible list.

CONCLUSION

Having considered the record and the Medical Review Panel's Report and Recommendation issued thereon, and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Review Panel's Report and Recommendation.

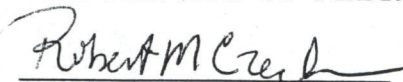
ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that H.S. is psychologically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issue ascertained through an updated background check conducted after a conditional offer of appointment, the appellant's appointment is otherwise mandated. A federal law, the Americans With Disabilities Act (ADA), 42 U.S.C.A. §12112(d)(3), expressly requires that a job offer be made before any individual is required to submit to a medical or psychological examination. *See also* the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examination* (October 10, 1995). That offer having been made, it is clear that, absent the erroneous disqualification, the aggrieved individual would have been employed in the position.

Since the appointing authority has not supported its burden of proof, upon the successful completion of his working test period, the Commission orders that appellant be granted a retroactive date of appointment to the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay or counsel fees, except the relief enumerated above.

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 8TH DAY OF FEBRUARY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

c: H.S.
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