



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.A., *et al.*,
County Police Officer (S9999R),
Camden County

CSC Docket Nos. 2015-2672, *et al.*

List Removal Appeals

ISSUED: MAR 13 2017 (DASV)

J.A., J.R., J.P., and L.S. appeal the request of Camden County to remove their names from the County Police Officer (S9999R), Camden County, eligible list on the basis of psychological unfitness to perform effectively the duties of the position. Since the appeals involve similar issues, they have been consolidated.

By way of background, J.A., J.R., J.P. appeared on the County Police Officer (S9999R), Camden County, eligible list which was certified to the appointing authority on November 17, 2014.¹ L.S. also appeared on the subject eligible list and his name was certified on December 10, 2014.² In disposing of the certifications, the appointing authority requested the removal of the appellants' names on the basis that they were not psychologically fit to perform effectively the duties of a County Police Officer. It is noted that J.A. was also removed from the County Correction Officer (S9999R), Camden County, eligible list for failure to meet the psychological requirements of the position and he filed an appeal of that removal. However, J.A. did not submit a psychological evaluation to challenge the pre-appointment evaluation. Therefore, his appeal was dismissed in December 2015. Similarly, J.R. and J.P. were removed from the County Correction Officer (S9999R), Camden County, eligible list for failure to meet the psychological requirements of the position. However, they did not file appeals of these removals. Regarding L.S., he was removed from the County Correction Officer (S9999R), Camden County, eligible

¹ J.R., J.A., and J.P. were ranked 59th, 86th, and 95th on the certification, respectively.
² L.S. ranked 50th on the certification and ranked lower on the subject eligible list than the other appellants who were certified earlier.

list on the same basis. He filed an appeal of that removal and submitted an independent psychological evaluation indicating that he was psychologically fit for employment as a County Correction Officer or County Police Officer. The appeal is pending review by the Medical Review Panel.

On appeal, J.A., J.R., and J.P. maintain that, although they were subjected to a County Correction Officer psychological examination, they were not subjected to a psychological/psychiatric examination for County Police Officer. It is noted that, with the exception of L.S., the appellants did not submit independent psychological/psychiatric reports regarding their fitness for a County Police Officer position.

It is further noted that staff from the Division of Appeals and Regulatory Affairs requested the pre-appointment psychological/psychiatric reports and supporting test materials of the appellants for the County Police Officer position. It also provided the appointing authority with the opportunity to set forth any argument for its rejection of the appellants. In response, the appointing authority presented the reports of Dr. Jennifer Kelly, Ph.D. For each appellant, Dr. Kelly determined that the appellant did "not satisfy the minimum standard for psychological qualification for the position of Corrections Officer with the Camden County Department of Corrections." With respect to J.A., J.R., and L.S., Dr. Kelly also stated that they are "viewed to be unable to perform one or more essential job functions." Additionally, she reiterated that J.P. was "unqualified for the prospective position." Dr. Kelly certified in each report that "*the above evaluation should only be utilized for the position for which the candidate was assessed*" (emphasis in original). Given the foregoing, a staff representative of the appointing authority clarified that the appellants "failed the Correction certification" and the failed psychological examination was used for the County Police Officer certification.

CONCLUSION

N.J.A.C. 4A:4-4.7(g) provides that when the Civil Service Commission (Commission) has accepted a single application for one or more law enforcement title areas, pursuant to *N.J.A.C.* 4A:4-2.3(c), an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area. However, it is impermissible for an appointing authority to remove a candidate's name from all titles areas for failure of a psychological examination, since testing is specific to each title area. See *In the Matter of Milton P. Hill, Jr.* (MSB, decided May 19, 2004).

In the instant matter, the appointing authority unduly removed the appellants' names from the County Police Officer (S9999R), Camden County,

eligible list, for failing to meet the psychological qualifications for County Correction Officer. In that regard, it is well settled that a valid evaluation would have to have been conducted in terms of the appellants' suitability for employment specifically as a County Police Officer. See e.g., *In the Matter of Anastasia Vey*, 124 N.J. 534 (1991) and 135 N.J. 306 (1994). In other words, a valid psychological evaluation must be specifically geared to the characteristics necessary to successfully perform the duties of the title in which employment is being sought. See e.g., *In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008) (Psychological evaluation for employment as a Sheriff's Officer is not a valid indicator for someone seeking employment as a Police Officer because the primary focus of these positions is not the same and each title has its own unique suitable characteristics). Although the titles in question are in the public safety field, the job descriptions and knowledge and abilities of each title differ. Indeed, the appointing authority's own psychologist, Dr. Kelly, acknowledged this when she advised that "*the above evaluation should only be utilized for the position for which the candidate was assessed*" (emphasis in original). Therefore, the appointing authority's request to have the appellants removed for psychological unsuitability for County Police Officer should not have been approved.

Nonetheless, the Commission is mindful that the appellants were not subject to psychological examinations for County Police Officer, and therefore, were not given conditional offers of employment in that title. In that regard, pursuant to the Americans with Disabilities Act, 42 U.S.C.A. sec. 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. See also N.J.A.C. 4A:4-6.5(b) (An appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment). Thus, in not actually subjecting the appellants to psychological examinations for the proper title, their appointments to County Police Officer is not mandated.³ Nevertheless, given the wrongful removal of the appellants from the subject eligible list, their names shall be restored to and certified from the County Police Officer (S9999R), Camden County, eligible list, at the time of the next certification. At that time, the appellants will be given another opportunity for appointment, which shall include an updated background investigation, and, if there are no disqualifying factors based on that investigation, a psychological/psychiatric examination for **County Police Officer**. It is noted that the subject eligible list will expire on May 1, 2017. Should it expire before the appellants are certified again, it is ordered that the County Police Officer (S9999R), Camden County, eligible list be revived and the appellants' names certified at the time of the next certification for the position. It is emphasized that if the appellants

³ Regardless of whether L.S. obtained an independent psychological evaluation for a County Police Officer position, the appointing authority did not subject him to a psychological examination for that position. Thus, L.S. did not receive a conditional offer of employment, and his appointment is not mandated.

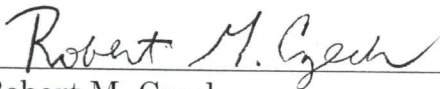
are not re-certified from the subject eligible list prior to its expiration, their names will be placed ahead of the eligibles on the certification of the new list for County Police Officer, Camden County.

ORDER

Therefore, it is ordered that these appeals be granted in part and J.A., J.R., J.P., and L.S. be certified at the time of the next certification for County Police Officer, Camden County, for prospective appointment in accordance with the decision.

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 9TH DAY OF MARCH, 2017



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J.R. (2015-2760)
J.P. (2015-2761)
L.S. (2015-2643)
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