

B-41



In the Matter of J.J.,
County Correction Officer (S9999R),
Essex County

CSC Docket No. 2015-2519

STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Medical Examiners Panel Appeal

ISSUED MAR 13 2017 (DASV)

J.J. appeals the request by Essex County to remove her name from the County Correction Officer (S9999R) eligible list for medical unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Examiners Panel (Panel) on November 22, 2016, which rendered the attached report and recommendation on December 29, 2016. The appellant and her family members were present at the meeting. The appointing authority was not present. No exceptions were filed by the parties.

N.J.A.C. 4A:4-6.5 provides for the Civil Service Commission (Commission) to utilize the expertise of the Panel to make a report and recommendation on medical disqualification issues. The Panel is composed of medical professionals, all of whom are faculty and practitioners of Rutgers New Jersey Medical School.

In this case, the Panel's Chairman, Lawrence D. Budnick, MD, Director of Occupational Medicine Service and Associate Professor of Medicine, Rutgers New Jersey Medical School, requested medical specialists to perform a chart review and to make findings and recommendations regarding the appellant's medical fitness for the job in question. Based on the evaluation of submitted information and the medical consultants' review, the Panel found, with a reasonable degree of medical certainty, that the appellant did not possess any significant disease, impairment, or functional limitation which would cause a direct threat to herself or others in the position of County Correction Officer. Therefore, it recommended that the appellant

be considered to be physically capable of undergoing the training involved to be a County Correction Officer and to perform the duties associated with the position.

It is noted that the appellant had been certified on June 19, 2014 from the County Correction Officer (S9999R), Essex County, eligible list, which does not expire until May 1, 2017. The appellant was certified in the 73rd position. Several appointments were made, including appointments of the 72nd and 74th ranked eligibles effective August 25, 2014.

CONCLUSION

Having considered the record and the Panel's report and recommendation issued thereon and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's report and recommendation that the appellant is medically fit to undergo the training involved to be a County Correction Officer and perform effectively the duties of the position. The Panel set forth that the appellant had a recent history of optic neuritis at the time of the initial medical examination and had been later diagnosed with multiple sclerosis. She began treatment for the latter and has not had a further episodes of neurologic dysfunction since November 2014. The appellant also underwent a neurological examination in December 2016, which was found to be normal. It is noted that while Essex County's physician indicated in an August 12, 2014 notification to the appointing authority that the appellant was not medically approved to be employed, a document dated the same date initially found that the appellant was medically approved "with reservations." A handwritten note on that document stated that "recent optic neuritis may indicate . . . underlying disease. Asymptomatic at this time." The Panel indicated in its report that episodes of neurological dysfunction due to multiple sclerosis do not occur suddenly and the appellant may not have any further episodes with continued treatment. Given the foregoing and its review of all submitted documents, the Panel did not find a basis to remove the appellant from the subject eligible list for medical unfitness.

ORDER

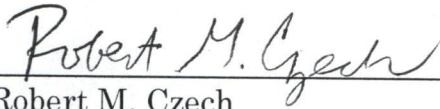
The Commission finds that the appointing authority has not met its burden of proof that J.J. is medically unfit to perform effectively the duties of a County Correction Officer and, therefore, the Commission orders that her name be restored to the County Correction Officer (S9999R), Essex County, eligible list, for retroactive appointment. In that regard, absent any disqualification issues 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. sec. 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 Examinations* (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 successful completion of her working test period, the Commission orders that appellant be granted a retroactive date of appointment to August 25, 2014, the date she would have been appointed if her 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, except the relief enumerated above.

This is the final administrative determination in the 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



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

c: J.J.
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