



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of H.M.G.,
Police Officer (S9999U), City of
Newark

CSC Docket No. 2018-603

Medical Review Panel Appeal

ISSUED: March 29, 2019 (BS)

H.M.G., represented by Michael L. Prigoff, Esq., appeals his rejection as a Police Officer candidate by the City of Newark Police Department and its request to remove his name from the eligible list for Police Officer (S9999U), City of Newark on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel (Panel) on September 28, 2018, which rendered its report and recommendation on September 28, 2018. Exceptions were filed on behalf of the appointing authority.

The report by the Panel discusses all submitted evaluations. It notes that Drs. Nicole Rafanello and Alex Rodrigues (evaluators on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as presenting with significant alcohol consumption issues. The appellant self-reported consuming an alarming number of alcoholic beverages. Although he revised and down-played the number during the course of the clinical interview, Drs. Rafanello and Rodrigues noted that the appellant still reported a number associated with an increased risk of developing an alcohol use disorder. The appellant's Personality Assessment Inventory (PAI) profile indicated the possible presence of a variety of psychological issues and concerns. Furthermore, the appellant's responses to the PAI anger assessment questions indicated that he may be prone to express his anger in an inappropriate manner. Drs. Rafanello and Rodrigues concluded that the appellant is not psychologically suitable for the subject position and did not recommend him for appointment.

Dr. Kenneth Freundlich, evaluator on behalf of the appellant, conducted a psychological evaluation and characterized the appellant as presenting as a psychologically healthy, well-adjusted man who is well-equipped to engage in a career in law enforcement. According to formal testing, the appellant exhibited adequate intellectual ability and reasoning. Dr. Freundlich found no evidence of any psychological disorder, conflicts or attitudes which might prevent him from maintaining a successful career in law enforcement. Dr. Freundlich opined that the previous testing revealed some inconsistencies due to the fact that English was not the appellant's native language and he had difficulty understanding the complex language of the test questions. Dr. Freundlich noted that, in contrast, when given the opportunity to ask for clarification, the appellant responded in a straightforward manner. Dr. Freundlich concluded that the appellant was an excellent candidate and found no reason why the appellant should not be hired as a Police Officer.

The evaluators on behalf of the appellant and the appointing authority reached differing conclusions and recommendations. The negative recommendations found support in concerns relating to the appellant's propensity to anger and substance abuse. The appellant was cooperative and answered all of the questions put to him by the Panel. The appellant received his last motor vehicle summons in 2012 and, prior to that, had been involved in two accidents. In spite of the appellant's initial misunderstanding regarding the alcohol and drinking questions, the Panel could find no propensity toward drinking. Even though the record indicated the appellant had inadequate credit because it included a Chapter 13 for bill consolidation, and several accounts in collection due to the appellant being laid-off from employment, he reported that he currently has no bills in collection and that he pays all of his bills on time. The Panel found the appellant's intellectual ability consistent with Dr. Freundlich's assessment and noted that the appellant was multilingual, with English as his second language, and that it was not unusual for cognitive testing results in someone's non-dominant language to be lower than the individual's true cognitive ability. The appellant's verbal abilities are low average; however, this remains within the average range. Accordingly, the Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is mentally fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. The Panel collectively concluded that there were no grounds to remove the appellant from the subject eligible list due to a lack of psychological fitness and that his name should be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, submits a letter from Drs. Rafanello and Rodrigues, the appointing authority's evaluators, as rebuttal to the findings of the Panel. Drs.

Rafanello and Rodrigues indicated that they were fully aware of issues regarding English as a second language and provided a description of how their evaluation was conducted. Drs. Rafanello and Rodrigues disputed Dr. Freundlich's report which stated that the appellant "was confused by the alcohol-related items." Instead, Drs. Rafanello and Rodrigues find it incredulous that an individual with 12 years of experience in public safety working on a university campus, with an Associate's degree in Computer Programming, and who worked 14 months as a Teller and Assistant Liquor Store Manager would lack familiarity with common alcohol-related terms such as "intoxication." Drs. Rafanello and Rodrigues continue by critiquing the data and results of the testing instruments utilized by Dr. Freundlich.

CONCLUSION

The Civil Service Commission (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 finds the exceptions presented by the appointing authority, prepared by Drs. Rafanello and Rodrigues, not to be persuasive. In this regard, the Commission notes that its Panel of qualified and licensed psychologists and psychiatrist have already reviewed the raw test data, reports and opinions of Drs. Rafanello and Rodrigues, as well as that of Dr. Freundlich, and rendered its own expert opinion in this matter. The Commission defers to and agrees with the expert opinion of its Panel. Although Drs. Rafanello and Rodrigues are not technically a party to this appeal, and it is not improper for an appointing authority to seek the advice and input of its evaluators when filing its exceptions, the Commission emphasizes that the responsibility to prepare and file exceptions rests solely with the appointing authority or its authorized legal representative. The Commission finds nothing in the appellant's behavioral record that is so egregious it would warrant his removal from consideration from serving in the subject title. Further, the Commission is mindful that any potential behavioral or performance issues regarding the appellant's employment can be addressed during the working test period.

Therefore, having considered the record and the Panel's Report and Recommendation issued thereon, and having made an independent evaluation of same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's Report and Recommendation.

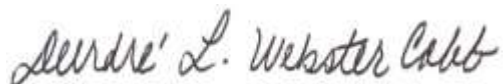
ORDER

The Commission finds that the appointing authority has not met its burden of proof that H.M.G. is psychologically unfit to perform effectively the duties of a Police Officer 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 July 31, 2018, 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 27TH DAY OF MARCH, 2019



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