



	:	STATE OF NEW JERSEY
	:	
	:	FINAL ADMINISTRATIVE ACTION
	:	OF THE
In the Matter of N.M., County	:	CIVIL SERVICE COMMISSION
Correction Officer (S9999U),	:	
Sussex County	:	
	:	
	:	Withdrawal of Appeal
	:	Acknowledgement of Settlement
CSC Docket No. 2019-1315	:	
	:	
	:	

ISSUED: OCTOBER 24, 2019 (DASV)

N.M., represented by Anthony Arbore, Esq., requests withdrawal of his appeal of his removal from the eligible list for County Correction Officer¹ (S9999U), Sussex County, on the basis of psychological unfitness to perform effectively the duties of the position.

The relevant facts are as follows:

1. On July 2, 2018, the appellant's name was certified from the County Correction Officer (S9999U), Sussex County, eligible list. In disposing of the certification, the appointing authority removed the appellant's name on the basis of psychological unfitness to perform effectively the duties of the position. The certification was disposed on October 25, 2018.
2. The appellant timely appealed the removal to the Civil Service Commission (Commission) on October 29, 2018.
3. A letter, dated November 14, 2018, was sent to the parties acknowledging the appeal and advising that submissions are to be filed within 20 days of the date of the letter. Additionally, the appellant was advised that should he wish to

¹ P.L. 2019, c.219 was approved on August 9, 2019, renaming County Correction Officer to County Correctional Police Officer effective December 1, 2019.

submit a report and recommendation from a New Jersey licensed psychologist or psychiatrist, he may do so within 90 calendar days from the filing of the appeal to the Commission pursuant to *N.J.A.C. 4A:4-6.5(e)*.

4. The appellant's psychological report recommending his psychological fitness for a County Correction Officer position was sent to the Commission on January 18, 2019.
5. The appeal was referred to the Medical Review Panel (Panel) for its review. By letter dated July 12, 2019, the parties were advised that the Panel would be considering the appellant's appeal at its meeting on August 21, 2019. The appellant was scheduled to meet with the Panel at 9:30 a.m. The letter also informed the parties that the Panel would not postpone consideration of the appeal unless the request met with the provisions of *N.J.A.C. 4A:2-1.3*. In the event that there was good and sufficient reason for the review to be cancelled or postponed, the parties were to notify the Commission no later than July 19, 2019. The letter further indicated that "[f]ailure to comply shall result in the assessment of costs to the involved party(ies)." It is noted that, on July 12, 2019, this letter was emailed and sent to the parties by regular mail.
6. No party requested cancellation or postponement of the appellant's meeting with the Panel by July 19, 2019.
7. The record in the matter was sent to the Panel on August 2, 2019 in preparation for its August 21, 2019 meeting.
8. On August 19, 2019 at 3:03 p.m., the appellant through his attorney emailed the Division of Appeals and Regulatory Affairs (DARA), requesting that the Panel meeting be adjourned since "the parties have reached a tentative settlement of this matter that shall be finalized by short order by way of the execution of a formal Settlement Agreement." The appellant's attorney noted that he was recently advised that Sussex County would be represented by James Prusinowski, Esq.²
9. On August 20, 2019, DARA staff informed the parties that the adjournment request was granted and, as noted in the July 12,

² It is noted that the Commission did not receive any notice that Sussex County would be represented by counsel in this matter. Correspondence to date was sent to the appointing authority.

2019 letter, costs would be assessed in the matter in the amount of \$675.³

Thereafter, the appellant objected to the imposition of costs in this matter as it “is both unwarranted and unfair.” He explained that he only became aware that the appointing authority was represented by legal counsel on August 13, 2019. On that date, he commenced settlement negotiations, which has now been finalized. The appellant indicated that he was withdrawing his appeal subject to the appointing authority’s withdrawal of his psychological disqualification. He presented the attached settlement agreement, which was signed on August 26, 2019 and specifies, among other things, that the appointing authority is willing to withdraw its psychological disqualification of the appellant. However, the appellant will not be appointed to the position as “the position for which applied no longer exists.” It is noted that Sussex County submitted a layoff plan to the Division of Agency Services (Agency Services), which contemplated the layoff of 16 County Correction Officers effective October 31, 2019. The plan was approved on September 5, 2019.

In conclusion, the appellant maintained that the settlement “not only avoids delay but also results in the Panel having one less case to hear, decide, and issue a ruling on.” He also emphasized that there is no violation of any rules to warrant a fine or penalty. Further, since he is withdrawing his appeal, he asserted that the adjournment request was moot. Therefore, the appellant requested that the costs in this matter not be assessed.

CONCLUSION

N.J.A.C. 4A:4-6.5(g) provides in relevant part that the Commission shall either conduct a written record review of the appeal or submit psychological appeals to the Panel for its report and recommendation. The Panel is composed of professionals in the psychological field. The Panel reviews the psychological testing data and reports submitted by the parties in the appeal in advance of the meeting, they interview candidates at the meeting, deliberate on each case, and write reports with their recommendation to the Commission. The Commission relies on the Panel’s reports to render its final determination as to whether the candidate was properly rejected for the position by the appointing authority. Given the volume of psychological disqualification appeals received by the Commission each year in conjunction with the fact that the Commission utilizes psychological medical professionals to review each case, the adjudication of psychological appeals is a lengthy process that can take up to two years. In this regard, the process consists of compiling the record which allows the appellant up to 90 days to submit an independent psychological evaluation; scheduling a meeting with the Panel which

³ The August 21, 2019 Panel meeting was composed of two psychologists and one psychiatrist and members were compensated a total of \$675 for the case.

generally meets once a month to review a maximum of six cases; awaiting the Panel's report to be issued; permitting parties to submit exceptions and cross exceptions to the Panel's report and recommendation within 10 and five days of receipt,⁴ respectively; and issuing the Commission's final determination. If the Commission determines that a candidate was improperly rejected for the position, the remedy provided is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes. Therefore, in order to ensure a fair process to all parties, it is imperative that the timeframes established throughout the process are strictly enforced.

In the instant matter, the appellant's appeal was filed on October 29, 2018 and he was scheduled to meet with the Panel on August 21, 2019. On July 12, 2019 more than one month prior to the Panel meeting, he was advised of the date of the meeting. He was also specifically directed to notify the Commission no later than July 19, 2019 if cancellation was requested. However, the appellant informed the Commission **less than two days** before the Panel meeting. The Panel had already received the record in the matter and reviewed the case in preparation for the meeting. As such, the Commission compensated the Panel \$675 for its review of the appellant's case.

N.J.A.C. 4A:2-1.3 provides in part that:

(a) any party requesting an adjournment of a hearing or other review must establish good and sufficient reason for such request. Such reason may include, but is not limited to:

1. Unavoidable appearance by an attorney for a party in any state or federal court; or
2. Illness of a party evidenced by an affidavit and a doctor's certificate.

(b) Where an adjournment is found not to be for good and sufficient reason, the [Commission] may impose a fine or penalty.

In addition, *N.J.A.C.* 4A:4-6.5(g)5 states that the Commission "may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules."

The appellant explains that he only became aware that the appointing authority was represented by legal counsel on August 13, 2019, and on that date, he commenced settlement negotiations. However, the appellant filed his appeal on October 29, 2018 and could have engaged in settlement discussions as early as that date regardless of whether the appointing authority was represented by legal

⁴ See *N.J.A.C.* 4A:4-6.5(g)3ii.

counsel or not. He had ample opportunity to advise the Commission to hold the case in abeyance pending settlement discussions had he engaged in them earlier. Moreover, the appellant was specifically informed in the July 12, 2019 scheduling letter regarding timeframes that “[f]ailure to comply shall result in the assessment of costs to the involved party(ies).” Given the appellant’s failure to adhere to the timeframes established, he has caused unnecessary delay in the review process. In that regard, as set forth above, an appeal of psychological disqualification is a lengthy process. Had the appellant advised the Commission earlier, another case could have been presented to the Panel. Instead, the Panel reviewed the appellant’s record needlessly. Therefore, since the Commission does not find a basis to reject the appellant’s request for an adjournment, and now withdrawal pursuant to a settlement agreement as set forth below, the appellant’s appeal is considered withdrawn. However, he has not shown good and sufficient reason to have requested an adjournment of his case less than two days prior to his scheduled meeting with the Panel. Therefore, the Commission orders that the appellant be assessed the cost of \$675 for the Panel’s review of his case. *See e.g., In the Matter of S.P.* (CSC, decided February 6, 2019) (Although the Commission accepted the appellant’s request to withdraw his appeal, the Commission assessed the appellant with costs of the Panel’s review of his case as he did not request to withdraw his appeal until after the Panel reviewed his case in preparation for the meeting).

Regarding the settlement agreement, it is noted that the policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. In this matter, no such compelling circumstances exist. The appellant voluntarily agrees to withdraw his appeal in exchange for the appointing authority’s withdrawal of his psychological disqualification. Further, the settlement terms do not stipulate the appellant’s appointment due to the anticipated abolishment of County Correction Officer positions. Therefore, under these circumstances, the Commission finds a sufficient basis to acknowledge the settlement agreement between the parties and directs Agency Services to amend the appellant’s disposition on the July 2, 2018 certification of the County Correction Officer (S9999U), Sussex County, eligible list from “F3” - removal due to psychological disqualification to “C2” – cancellation - Commission action. The appellant’s name shall be retained on the County Correction Officer (S9999U) eligible list until it expires on March 30, 2020. No other relief is granted.

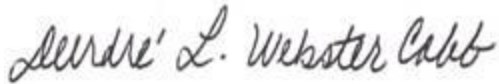
ORDER

The Commission acknowledges the settlement agreement between the parties. Therefore, N.M.’s appeal is considered withdrawn, and Agency Services is

ordered to amend N.M.'s disposition on the July 2, 2018 certification of the County Correction Officer (S9999U), Sussex County, eligible list from removal due to psychological disqualification to a certification cancellation in accordance with this decision. Additionally, it is ordered that N.M. be assessed the cost of the psychological review of his case by the Panel in the amount of \$675 to be remitted to the Commission within 30 days of issuance of this 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 23RD DAY OF OCTOBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: N.M.
Anthony Arbore, Esq.
Michael Estrada
James Prusinowski, Esq.
Kelly Glenn
Beth Wood