



	:	STATE OF NEW JERSEY
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In the Matter of O.C., Police Officer	:	FINAL ADMINISTRATIVE ACTION
(S9999U), City of Elizabeth	:	OF THE
	:	CIVIL SERVICE COMMISSION
	:	
CSC Docket No. 2019-669	:	
	:	Medical Review Panel
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	:	
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ISSUED: FEBRUARY 27, 2020 (DASV)

O.C., represented by Donald A. DiGioia, Esq., appeals his rejection as a Police Officer candidate by the City of Elizabeth and its request to remove his name from the eligible list for Police Officer (S9999U) on the basis of psychological unfitness to perform effectively the duties of the position

This appeal was referred for independent evaluation by the Civil Service Commission (Commission) in a decision rendered November 6, 2019, which is attached. The appellant was evaluated by Dr. Robert Kanen, who rendered a Psychological Evaluation and Report on November 27, 2019. No exceptions or cross exceptions were filed by the parties.

The Psychological Evaluation and Report by Dr. Kanen discusses the evaluation procedure and reviews the previous psychological findings relative to the appellant. In addition to reviewing the reports and test data submitted by the previous evaluators, Dr. Kanen administered the following: Clinical Interview/Mental Status Examination; Wechsler Adult Intelligence Scale (WAIS), 4th Edition; Wechsler Memory Scale, 4th Edition; Wide Range Achievement Test – Revision 3; Behavioral History Questionnaire, and the Inwald Personality Inventory – II. It is noted that the Commission had ordered that the evaluation include a full standardized measure of memory, such as the Wechsler Memory Scale, and a full standardized cognitive measure, such as the WAIS. The Medical Review Panel recommended that such evaluation “would provide insight regarding the candidate’s memory and ability to accurately recall information as would be required by the position for which he has applied.” Upon review of the test results,

Dr. Kanen found no evidence that the appellant had any memory problems but noted that a cautious interpretation of the scores should be taken. Moreover, Dr. Kanen indicated that the appellant is functioning within “normal ranges” (low average range of cognitive ability) and does not possess psychopathology or personality problems that would interfere with his work performance. Furthermore, he found that the appellant has had stable employment and no other arrests in his record. Dr. Kanen noted that the appellant is currently working with the Elizabeth Board of Education in security and has received excellent recommendations. Therefore, Dr. Kanen concluded that the appellant was psychologically suited for employment as a Police Officer with the City of Elizabeth.

CONCLUSION

The job specification for Police Officer is the official job description for such municipal positions within the Civil Service system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives and the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

In the present matter, the Commission referred the appellant for an independent psychological evaluation. Dr. Kanen performed additional tests necessary to determine the appellant’s psychological fitness for a Police Officer position and did not find that the appellant had any memory problems. Dr. Kanen also found that the appellant is functioning within “normal ranges” and does not possess psychopathology or personality problems that would interfere with his work performance. Accordingly, Dr. Kanen found the appellant psychologically suited for a Police Officer position with the City of Elizabeth.

Therefore, having considered the record and the independent Psychological Report and Recommendation issued thereon, and having made an independent evaluation of the same, including a review of the job specification for the position sought, the Commission accepts and adopts the findings and conclusions as contained in the independent Psychological Report and Recommendation and orders that the appellant's appeal be granted. The Commission is mindful that any potential behavioral or work performance issues can be addressed during the appellant's working test period as a Police Officer.

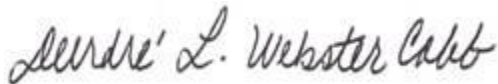
ORDER

The Commission finds that the appointing authority has not met its burden of proof that O.C. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that the appellant's 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 the appellant be granted a retroactive date of appointment to July 12, 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 26TH DAY OF FEBRUARY, 2020



Deirdre L. Webster Cobb
Chairperson
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Attachment

c: O.C.
Donald A. DiGioia, Esq.
Robert J. Lenahan, Jr., Esq.
Kelly Glenn



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of O.C., Police Officer
(S9999U), City of Elizabeth

CSC Docket No. 2019-669

Medical Review Panel

ISSUED: NOVEMBER 8, 2019 (DASV)

O.C., represented by Donald A. DiGioia, Esq., appeals his rejection as a Police Officer candidate by the City of Elizabeth and its request to remove his name from the eligible list for Police Officer (S9999U) 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 August 21, 2019, which rendered a report and recommendation. No exceptions were filed by the parties. It is noted that the appellant, his attorney (via phone), and Robert J. Lenahan, Esq., and Dr. Betty C. McLendon, on behalf of the appointing authority, were present at the Panel meeting.

The report by the Panel discusses all submitted evaluations and the information obtained from the meeting. The negative indications related to the appellant's failure to make adequate adjustments in an academic setting, irresponsible behavior, poor judgment, and emotional instability. Specifically, Dr. McClendon, the evaluator for the appointing authority, found a "pattern of asocial adjustment . . . noted by excessive and illegal use of alcohol, reckless and impulsive" behavior including driving while under the influence (DWI) of alcohol and an arrest for possession of marijuana. However, the appellant's psychological evaluator, Dr. Roger T. Raftery, noted that the appellant's drug possession charge occurred over 10 years ago when he was 18 years old and that the appointing authority did not remove the appellant from the subject eligible list due to his DWI charge. Regarding the appellant's mental state, Dr. Raftery found him within normal limits and he did not display any signs of psychological disorder. Dr.

Raftery further indicated that the appellant is “grossly within the average range of intellectual ability but does have a weakness, specifically verbal abstract reasoning ability.” In conclusion, Dr. Raftery characterizes the appellant as a “marginal candidate” but would not completely disqualify him based on his history as the appellant demonstrated no indications of sociopathic tendencies or a pattern of asocial/antisocial adjustment.

At the Panel meeting, the appellant’s behavioral history, including the appellant’s arrests for marijuana and DWI, was discussed. The Panel evaluated the information and noted in its report that there had not been any further issues in over five years. However, at the Panel meeting, Dr. McLendon expressed concerns with the appellant’s “lack of focus, short-term memory difficulties, decision making skills, concept-formation/reasoning, inability to conduct simple mathematical calculations and inconsistencies in reporting.” While Dr. McLendon did not believe that the appellant was attempting to deceive, the inconsistencies arose from the aforementioned difficulties. The appellant presented a similar disposition at the meeting. The Panel noted that the appellant was articulate in response to some areas, but when asked about his thinking process with some of the test items, he could not explain nor recall why he answered the items in a specific way. The Panel indicated that the appellant was administered the Shipley Institute for Living Scale – 2 test, which reflected that the appellant was in the “low average range.” However, this test is a screening measure and does not provide a full understanding of a candidate’s cognitive ability. Furthermore, Drs. McLendon and Raftery did not conduct a standardized measure of memory. Therefore, based on the evaluations, the test results of the appellant, and his presentation at the meeting, the Panel requested that the appellant undergo an independent evaluation “that includes a full standardized measure of memory (e.g., Wechsler Memory Scale-IV) and a full standardized cognitive measure (e.g., WAIS-IV).” The Panel concluded that such evaluation “would provide insight regarding the candidate’s memory and ability to accurately recall information as would be required by the position for which he has applied.”

CONCLUSION

The Civil Service Commission (Commission) has reviewed the report and recommendation of the 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. The Commission agrees with the Panel’s recommendation and finds it necessary to refer the appellant for an independent evaluation by a New Jersey licensed psychologist which shall include an in-depth cognitive assessment of

the appellant, which shall include a full standardized measure of memory (Wechsler Memory Scale-IV) and a full standardized measure of his cognitive abilities (WAIS-IV).

ORDER

The Commission therefore orders that O.C. be administered an independent psychological evaluation as set forth in this decision. The Commission further orders that the cost incurred for this evaluation be assessed to the appointing authority in the amount of \$530. Prior to the Commission's consideration of the evaluation, copies of the independent evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

O.C. is to contact Dr. Robert Kanen, the Commission's independent evaluator, within 15 days of the issuance date on this determination to schedule an appointment. Dr. Kanen's contact information is as follows:

Dr. Robert Kanen



If O.C. does not contact Dr. Kanen within the time period noted above, the entire matter will be referred to the Commission for a final administrative determination and the appellant's lack of pursuit will be noted.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 6TH DAY OF NOVEMBER, 2019

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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