



STATE OF NEW JERSEY

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

In the Matter of D.M., Correctional
Police Officer (S9999U),
Department of Corrections

List Removal Appeal

CSC Docket No. 2021-1076

**ISSUED SEPTEMBER 24, 2021
(DASV)**

D.M. appeals the removal of his name from the Correctional Police Officer (S9999U), Department of Corrections, eligible list on the basis of an unsatisfactory background report and for falsifying his employment application.

By way of background, in *In the Matter of D.M.* (CSC, decided June 3, 2020), the Civil Service Commission (Commission) granted the appellant's appeal of his removal from the Correctional Police Officer (S9999U), Department of Corrections, eligible list and restored his name to the eligible list, finding that the appointing authority had not met its burden of proof that the appellant was psychologically unfit to perform effectively the duties of a Correctional Police Officer. The Commission had initially referred the appellant for an independent evaluation as recommended by the Medical Review Panel. *See In the Matter of D.M.* (CSC, decided February 26, 2020). The Commission's independent evaluator, Dr. Robert Kanen, found that the appellant was functioning within "normal ranges" and had no psychopathology or personality problems that would interfere with his work performance. Further, the appellant's two temporary restraining orders (TROs) issued in 2014 and 2018 were reviewed. Dr. Kanen found no evidence of physical or threatening behavior by the appellant in the two cases and the charges against him had been dismissed. It was Dr. Kanen's opinion that the TROs did not reflect that the appellant has aggressive tendencies. Therefore, upon his independent evaluation, which included a review of the reports and test data submitted by the previous evaluators, and the

administration of a clinical interview as well as psychological tests on the appellant, Dr. Kanen concluded that the appellant was psychologically suited for employment as a Correctional Police Officer with the Department of Corrections. It is noted that, upon granting the appellant's appeal, the Commission indicated that, absent any disqualification issues ascertained through an updated background check, the appellant's appointment was mandated. Thus, it ordered that, upon the successful completion of the appellant's working test period, he would be granted a retroactive date of appointment to June 26, 2019. Thereafter, the appellant's name was restored to the subject eligible list and the appointing authority conducted an updated background check.

By notice dated January 13, 2021, the appointing authority advised the appellant that he had been removed from the subject eligible list due to an unsatisfactory background report and for falsifying his employment application. Specifically, the appointing authority removed the appellant based on the two TROs noted above, as well as a domestic verbal dispute in 2014 with his mother. Moreover, the appointing authority indicated that question 37 of the employment application asked the appellant whether he had ever been suspended or given a written reprimand by any employer. The appellant answered no. However, the appointing authority submitted that the background investigation found that the appellant had been suspended immediately from his Class 1 Special Law Enforcement position with the Paramus Police Department pending an investigation by Internal Affairs. The appellant then pursued the instant appeal.

On appeal, the appellant states that he finds himself "appealing again to a situation I've explained before." He indicates that Dr. Kanen had already reviewed the TROs and did not find them to be psychologically disqualifying. Moreover, the appellant emphasizes that Dr. Kanen found him suitable for employment in that he has the cognitive skills for the position and fell into the category of likely to meet expectations for a public safety/security position. Furthermore, he indicates that he previously disclosed these TROs when he first applied for a Correctional Police Officer position in 2018 and they were not at issue at that time. The appellant explains what had happened and emphasizes that the TROs were dismissed. He indicates that "[n]othing had really changed besides getting a new job and then being unemployed due to covid-19." Regarding the 2014 verbal dispute with his mother, the appellant states that neither he nor his mother recall the incident, and even if it occurred, he notes that he was in high school living with his parents and has a great relationship with his mother. As for question 37, the appellant explains that he answered no to the question because it was a "mistake and honestly [he] was thinking about the most recent jobs [he] had." However, he states that he disclosed his immediate suspension in his prior application and was not attempting to hide it. Additionally, although he had been immediately suspended and his firearms and identification card were taken from him, they were all returned to him since the TRO was dismissed. The appellant

acknowledges that “these situations were mistakes” and do not reflect the person he is today. Therefore, he requests that his appeal be granted.

In response, the appointing authority indicates that it “wishes to stand with its original submission of documentation” regarding the appellant’s removal from the subject eligible list. In that regard, it explains that “a complete and thorough investigation was completed for a second time by an investigative officer who had not been assigned to Mr. [D.M.’s] original investigation.” The appointing authority indicates that the facts surrounding the appellant’s employment with the Paramus Police Department led “to the consideration and eventual removal” of the appellant, which concerned the second TRO. It was reported that the appellant had been harassing “the victim and family for months using his authority as a Special Police Officer.” Thus, the appointing authority submits that the action exhibited by [D.M.] are not in line with Law Enforcement objectives, goals and expectations of conduct.” Accordingly, the appointing authority submits that the appellant was not cleared to proceed.

In reply, the appellant reiterates that the appointing authority conducted the background investigation and cleared him the first time knowing about the TROs which he disclosed. He then proceeded to the psychological evaluation but was not successful because the TROs were of concern. However, he appealed, and, despite the TROs, he was found to be psychologically suitable for the subject position by Dr. Kanen and the Commission. He once again explains the circumstances of the TROs and maintains that the second TRO “is full of allegations” and “false and full of lies.” The appellant submits that he has “trained mentally and physically” for the position and thanks the appointing authority and the Commission.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Commission to remove an eligible’s name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate’s background and recognizing the nature of the position at issue, a person should not be eligible for appointment. *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the Commission to remove an eligible’s name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

Initially, it is noted that in the Commission’s prior decision, it restored the appellant’s name to the subject eligible list as it found the appellant to be

psychologically suited for the position. It mandated the appellant's appointment absent any disqualification issues ascertained through an updated background check. In that regard, the Commission recognizes that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. As such, when the Commission is presented with new information that a Correctional Police Officer candidate does not have the background to meet the high standards to be a law enforcement officer, it has the obligation, and even the ability *sua sponte*, to remove that candidate from an eligible list, even if it previously restored that candidate to the eligible list. The appointing authority presents issues in the appellant's background and on his employment application that were available to it in its initial background check. In other words, the appointing authority had an opportunity to request the removal of the appellant's name based on its background investigation prior to subjecting him to a psychological examination in the first instance, but it did not do so. Therefore, while the second investigator may have deemed the appellant's background as disqualifying, the appointing authority already evaluated the information, and it did not remove the appellant from the subject eligible list based on that information prior to extending him a conditional offer of employment. Accordingly, the appointing authority is precluded from utilizing such information to disqualify the appellant in the present matter. *See e.g., In the Matter of Edison Cerezo*, Docket No. A-4533-02T3 (App. Div. October 15, 2004) (Appellate Division affirmed the decision denying appointing authority's request to remove an eligible from the Police Officer eligible list due to unsatisfactory background when eligible was subjected to a psychological examination and eligible could not be bypassed).

Furthermore, the appellant acknowledges that he incorrectly answered a question on his updated employment application as he thought the question pertained to recent employment and that he was not attempting to hide it as he previously disclosed it. Although the Commission warns the appellant that failure to accurately complete an application may be cause for his removal in future eligible lists, the Commission accepts the appellant's explanation, and more importantly, the appellant submits that he previously disclosed his immediate suspension in his prior application. The appointing authority does not dispute that fact in its response. Therefore, under these circumstances, the Commission does not find the appellant's omission to warrant his removal from the subject eligible list. *Compare, In the Matter of Jean R. Bruno* (MSB, decided January 30, 2008) (Although the appellant was deemed psychologically fit and received a mandated appointment, his updated background check revealed a recent disorderly conduct offense, driver's license

suspensions and falsification charges that warranted non-appointment and removal from the list).

The Commission is mindful that pursuant to the Americans with Disabilities Act (ADA), 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*, the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be "real," the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate's possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information. In the present case, as set forth above, the appointing authority already evaluated the information in dispute, and it nonetheless rendered a conditional offer of employment, which was conditioned upon the psychological examination. The appellant submitted to three psychological evaluations in addition to the Medical Review Panel's review of his case and has been found by the Commission to be psychologically suited for the position of Correctional Police Officer. However, while the appointing authority is precluded from removing the appellant from the subject eligible list based on the information it presents in the instant matter, including its claim of falsification, it is not precluded from administering a current medical examination to the appellant if it has not done so already, which shall be the last step of the appellant's preemployment processing. Should he be medically cleared for duty, the appellant's appointment is therefore mandated. Accordingly, upon the successful completion of his working test period, the Commission orders that the appellant be granted a retroactive date of appointment to June 26, 2019, the date he would have been appointed if his name had not been removed originally 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.

ORDER

Therefore, it is ordered that the appellant's appeal be granted in accordance with 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 22 DAY OF SEPTEMBER, 2021

Deirdre' L. Webster Cobb

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