



STATE OF NEW JERSEY

In the Matter of S.K.,
Police Officer (S9999A),
Township of Belleville

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

CSC Docket No. 2021-810

Medical Review Panel Appeal

ISSUED: MARCH 4, 2022 (BS)

S.K., represented by Ben Weathers, Esq., appeals his rejection as a Police Officer candidate by the Township of Belleville and its request to remove his name from the eligible list for Police Officer (S9999A) 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 May 14, 2021, which rendered its Report and Recommendation on May 25, 2021. Exceptions were filed on behalf of the appellant, and cross exceptions were filed on behalf of the appointing authority.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Han Zhang Liang, evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and characterized the appellant as presenting as “defensive, evasive and very stoic” during his interview. Dr. Liang noted that the appellant has served in the National Guard since 2011, being deployed most recently in January 2020, and had not had a full-time job at the time of the evaluation. The appellant worked as a driver prior to his deployment. Moreover, the appellant reported a history of “serious financial problems” due to “dealing with surgeries” and maxing out his credit cards “to stay afloat.” He had a history of making late payments on his credit cards while unemployed, with the last late payment occurring in 2016. Additionally, Dr. Liang indicated that the appellant had two arrests: one in 2008 for unsafe vehicle operation and driving without a license (his

license had been suspended twice) and one in 2018 for public intoxication, which was dismissed. Moreover, Dr. Liang indicated that the appellant was issued over 20 motor vehicle summonses in his life. The appellant also violated a town ordinance regarding “loud noises” in 2014. As a result, Dr. Liang did not find the appellant psychologically suitable for employment as a Police Officer.

The Panel’s report also indicates that Dr. David Goldstein, evaluator on behalf of the appellant, carried out a psychological evaluation. He stated that the appellant graduated high school and dropped out of college after one year. The appellant self-reported that joining the National Guard was the “best decision” he ever made. Dr. Goldstein listed that the appellant also worked full-time as a granite installer for two years prior to joining the National Guard and received unemployment benefits after deployment due to a broken wrist and being unable to work. The appellant denied having any traumatic experiences while stationed in Bahrain during his deployment. Dr. Goldstein noted that the appellant did not have the time to contest the charges filed against him by Belleville Police in 2014 as he was preparing for deployment. Moreover, the appellant reported that he worked as an Uber driver for approximately six to eight months and then returned to his job as a granite installer prior to being deployed to Djibouti. The appellant acknowledged that he had been issued 19 motor vehicle tickets and that his license had been suspended for six months due to an unpaid surcharge of which he claimed he was unaware. The appellant acknowledged that he was issued a “Drunk in Public” summons while in California. Dr. Goldstein indicated that the appellant denied any history of mental health treatment or substance abuse issues. Dr. Goldstein concluded that, in his professional opinion “to a reasonable degree of psychological certainty,” the appellant was psychologically suitable to serve as a Police Officer.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The concerns of the appointing authority’s evaluator centered on the appellant’s history of multiple motor vehicle driving violations, unclear work history, and possible alcohol abuse. The appellant’s evaluator did not express any of these concerns although he reviewed the appellant’s behavioral history. As set forth in its report, the Panel questioned the appellant about his driving record, which the appellant stated included 22 motor vehicle tickets, one of which was for not obeying the instructions of a Police Officer, with the most recent violation occurring in 2018. Moreover, the Panel reviewed the appellant’s work history and noted that the appellant currently works as a professional poker player, which he failed to reveal during the previous evaluations. The appellant reported that he considers this a job and not gambling and that he denied having a gambling problem. The Panel was unclear on how often the appellant abused alcohol in the past, although it did appear that alcohol was involved in at least two of the incidents in which he had a charge or summons filed against him. The Panel found a lack of compliance with rules and regulations on the part of the appellant based on his repeated violations of traffic laws and noted he was not forthright concerning his

job as a professional poker player during the course of the evaluations. The Panel collectively determined that the results of the evaluations, along with the appellant's presentation during the Panel meeting and his behavioral record, provided sufficient evidence to support the concerns listed in the report completed on behalf of the appointing authority. Accordingly, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicated that the appellant was psychologically unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld. The Panel recommended that the appellant be removed from the subject eligible list.

In his exceptions, the appellant argues that his removal from the subject eligible list did not articulate the validation process set forth in *In the Matter of Vey*, 124 N.J. 534 (1991). In that regard, he presents that the appointing authority's conclusions were "procedurally deficient" since his removal was not based on psychological reasons. Instead, the appointing authority and the Panel relied on his driving record as a basis for removal. Additionally, the appellant contends that the appointing authority's findings were not specifically correlated with job performance or a personality trait that would be "predictive of future performance as a Police Officer." The appellant notes that his last traffic offense was three years ago. Likewise, the appellant asserts that the Panel's concerns with his "forthrightness about his professional poker-playing are only valid for the purposes of his psychological evaluation" if the criteria outlined in *Vey, supra*, are utilized which he suggests were not. Rather, the appellant submits that that foregoing issues have more to do with his background rather than his psychological profile. In contrast, the appellant highlights Dr. Goldstein's evaluation, which he contends focused on specific traits which align with the functional competencies of law enforcement work. Thus, the appellant maintains that the appointing authority has failed to achieve its burden of proof in this matter. Given the evaluators' conflicting reports, the appellant requests that that the matter be transmitted to the Office of Administrative Law for an evidentiary hearing. At the very least, the appellant maintains that the Civil Service Commission (Commission) should refer him for an independent psychological evaluation. Finally, the appellant argues that the Panel "did not fully appreciate" his military service or the collateral interview with his platoon sergeant, who praised the appellant's truthfulness, integrity, and being a team player. Accordingly, the appellant urges the Commission to disregard the findings of the Panel and reinstate him to the subject eligible list.

In its cross exceptions, the appointing authority, represented by David L. Epstein, Esq., argues that the appellant's "history of arrests, convictions, motor vehicle violations, accidents, and license suspensions might have alone been sufficient for deeming [the appellant] ineligible even in the absence of an 'unfit' psychiatric evaluation." The appointing authority disagrees with the appellant's assertions that his personality traits were misperceived and/or not tied to any specific

behavior or personality pattern that would render him unsuitable for employment as a Police Officer. The appellant's behavioral record does not appear to be in dispute. The appointing authority maintains that the appellant's "inconsistent, evasive, and untruthful answers about a variety of subjects were recorded" by the appointing authority's evaluator, Dr. Liang, who noted the appellant's "rather marked lack of devotion to truth telling." Moreover, the appointing authority emphasizes that the standardized testing revealed the appellant had an undue attention to detail, which begs the question why the appellant missed crucial details when answering. It states that the appellant attempted to explain his driving record as he used to "drive too fast" when he was "younger." However, the appointing authority notes that the appellant's most recent offense occurred in 2018 for "improper display/fictitious plates." It also emphasizes that the appellant's test scores only enhance the already troubling concerns about him, which included issues with integrity, impulse control, attention to safety, social competence, and alcohol use. Moreover, the appointing authority characterizes the platoon sergeant's attestation to the appellant's character as "hearsay" and disputes any correlation between the appellant's functions in the military with those of modern-day law enforcement. The appointing authority questions the appellant's reliance on *Vey, supra*, in that Dr. Liang "not only provides ample support for the conclusion --- including standardized psychological test results --- but also explains how that trait translates to performance in the field as a Police Officer." In summary, the appointing authority submits that the appellant's attempt to transform the critically important police candidacy fitness process into a "battle of psychologists" does not call into dispute what he said while being evaluated, what he said on his application, his driving, arrest and conviction history, or the results of standardized psychological testing, all of which support his ineligibility for the position at issue. The appointing authority requests that the Commission adopt the Report and Recommendation of the Panel and find the appellant psychologically unsuitable for the position.

CONCLUSION

The Job Specification for the title, 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, 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.

The Commission has reviewed the Job Specification for this title and the duties and abilities encompassed therein and finds legitimate concerns were raised by the appointing authority's evaluator concerning the appellant's history of multiple motor vehicle driving violations, unclear work history, and possible alcohol abuse. The Commission is not persuaded by the appellant's exceptions. The Commission agrees with the appointing authority's argument that the appellant's history of arrests, convictions, motor vehicle violations, accidents, and license suspensions might have alone been sufficient for deeming the appellant ineligible even in the absence of an "unfit" psychological evaluation. Since the appellant's history is so extensive, the Commission wonders why the appointing authority extended him a conditional offer of appointment in the first place. The disregard for rules and regulations demonstrated by the appellant's extensive motor vehicle history alone renders him an unsuitable candidate for a position in law enforcement. The public expects candidates for positions in law enforcement to be held to a higher standard of personal accountability, and an extensive adverse motor vehicle record which demonstrates a disregard of rules and regulations can be considered when evaluating candidates for law enforcement positions. Nonetheless, the appellant's multiple motor vehicle violations are indicative of the appellant's lack of judgment which, contrary to the appellant's arguments regarding the standard set forth in *Vey, supra*, is correlated with job performance and a personality trait that would be "predictive of future performance as a Police Officer." The exercise of good judgment is an essential trait for successfully serving as a law enforcement officer. Furthermore, it is clear that the appellant was not forthright about his employment, as he did not reveal being a professional poker player to the appointing authority's evaluator.

Lastly, the appellant argues that the Panel "did not fully appreciate" the appellant's military service or give proper weight to the appellant's platoon sergeant's assessment of his qualifications and character. However, the Commission is mindful that military experiences are more structured and narrower in scope than those experiences one might encounter in a law enforcement position, particularly one that deals with the public, and that military experience does not necessarily equate with law enforcement success.

With regard to the appellant's request for a hearing, *N.J.A.C.* 4A:4-6.5(g) states in pertinent part that the Commission may either conduct a written record review or submit psychological appeals to the Panel. The Commission shall review the appeal, including the written report and exceptions, if any, and render a final written

decision. *See N.J.A.C. 4A:4-6.5(h)*. Hearings are granted only in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. In this matter, the Commission concludes that no material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978). Therefore, the appellant's request is denied. Likewise, regarding the appellant's request for an independent psychological evaluation, the Commission finds the appellant's psychological disqualification is amply supported by the record and finds no compelling reason to refer the appellant to an independent psychological evaluation.

The Commission notes that, prior to making its Report and Recommendation, the Panel conducts an independent review of all of the raw data presented by the parties as well as the raw data and recommendations and conclusions drawn by the various evaluators prior to rendering its own conclusions and recommendations, which are based firmly on the totality of the record presented to it and, as such, are not subjective. The Panel's observations regarding the appellant's behavioral record, employment history or lack thereof, responses to the various assessment tools, and appearance before the Panel are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of applicants. The Commission finds that the record, when viewed in its entirety, supports the findings of the Panel and the appointing authority's evaluator of the appellant's problematic behaviors and poor judgment. Accordingly, the Commission cannot ratify the appellant's psychological fitness to serve as a Police Officer.

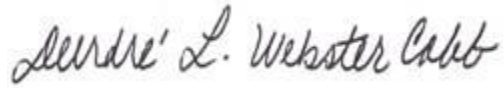
Therefore, having considered the record and the Panel's Report and Recommendation issued thereon, and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusion as contained in the Panel's Report and Recommendation and denies the appellant's appeal.

ORDER

The Commission finds that the appointing authority has met its burden of proof that S.K. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be removed from the subject eligible list.

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 2ND DAY OF MARCH, 2022



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