



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of D.B., Fire Fighter
(M1509T), City of Camden

CSC Docket No. 2017-3761

Medical Review Panel

ISSUED: NOVEMBER 23, 2018 (DASV)

D.B. appeals his rejection as a Fire Fighter candidate by the City of Camden and its request to remove his name from the eligible list for Fire Fighter (M1509T) 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 August 1, 2018, which is attached. The appellant was evaluated by Dr. Robert Kanen, who rendered the attached Psychological Evaluation and Report on September 17, 2018. No exceptions or cross exceptions were filed by the parties. It is noted that the appellant responded, accepting the results of Dr. Kanen's evaluation.

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, 4th Edition, and the Inwald Personality Inventory – II. Dr. Kanen found no evidence that the appellant possesses a serious psychopathology that would interfere with the duties of a Fire Fighter and noted that he had been referred for independent psychological evaluation for a more in depth cognitive assessment. In that regard, the appellant has a full-scale IQ of 83, which is in the low average of the 13th percentile. However, he demonstrated significant strength on visual puzzles,

scoring in the 75th percentile. Dr. Kanen opined that "[t]his suggests that [the appellant] would be able to learn about the use of fire equipment, be able to assemble fire equipment and use them effectively while under time pressure. His attention and concentration spans are in the average range. He is capable of learning . . . [and] has the capacity to function at a higher cognitive level." Therefore, Dr. Kanen concluded that the appellant has the cognitive ability to perform the duties of a Fire Fighter.

CONCLUSION

The job specification for the title of Fire Fighter is the official job description for such positions within the Civil Service. According to the specification, Fire Fighters are entrusted with the safety and maintenance of expensive equipment and vehicles and are responsible for the lives of the public and other officers with whom they work. Some of the skills and abilities required to perform the job include the ability to work closely with people, including functioning as a team member, to exercise tact or diplomacy and display compassion, understanding and patience, the ability to understand and carry out instructions, and the ability to think clearly and apply knowledge under stressful conditions and to handle more than one task at a time. A Fire Fighter must also be able to follow procedures and perform routine and repetitive tasks and must use sound judgment and logical thinking when responding to many emergency situations. Examples include conducting step-by-step searches of buildings, placing gear in appropriate locations to expedite response time, performing preparatory operations to ensure delivery of water at a fire, adequately maintaining equipment and administering appropriate treatment to victims at the scene of a fire, *e.g.*, preventing further injury, reducing shock, restoring breathing. The ability to relay and interpret information clearly and accurately is of utmost importance to Fire Fighters as they are required to maintain radio communications with team members during rescue and firefighting operations.

In the present matter, the Commission agreed with the Panel to refer the appellant for an independent psychological evaluation, which shall include an in-depth cognitive assessment of the appellant. As set forth above, Dr. Kanen interviewed the appellant and performed applicable tests to determine his psychological fitness and cognitive ability. Dr. Kanen found no evidence that the appellant possesses serious psychopathology and that he has the cognitive ability to effectively perform the duties of a Fire Fighter.

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 attached independent Psychological Report and Recommendation and orders that the appellant's appeal be granted.

ORDER

The Commission finds that the appointing authority has not met its burden of proof that D.B. is psychologically unfit to perform effectively the duties of a Fire Fighter 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 May 1, 2017, 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 21ST DAY OF NOVEMBER, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

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

Attachment

c: D.B.
Jason Asuncion
Kelly Glenn



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DECISION OF
CIVIL SERVICE COMMISSION

In the Matter of D.B., Fire Fighter
(M1509T), City of Camden

CSC Docket No. 2017-3761

Medical Review Panel

ISSUED: AUG - 8 2018 (DASV)

D.B. appeals his rejection as a Fire Fighter candidate by the City of Camden and its request to remove his name from the eligible list for Fire Fighter (M1509T) 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 18, 2018, which rendered the attached report and recommendation. No exceptions were filed by the parties. It is noted that the appellant submits that he is "willing to accept testing for a cognitive assessment based" on the Panel's suggestion.

The report by the Panel discusses all submitted evaluations and the information obtained from the meeting. The negative indications related to the appellant's testing, as he was below average in the Wonderlic Personnel Test which raised concerns with his ability to complete the academic aspects of a Fire Fighter academy. In addition, the Candidate and Officer Personnel Survey and the Personality Assessment Inventory demonstrated possible problems with rule compliance, acceptance of supervision, integrity, interpersonal conflict, anxiety, irritability, and lack of energy. The appointing authority's evaluator, Dr. Robert Tanenbaum, also found that the appellant had his driver's license suspended, received motor vehicle violations, and had academic and behavioral issues in school. Dr. Tanenbaum concluded that the appellant was not psychologically suited for a Fire Fighter position. The appellant's independent evaluator, Dr. Ange Puig, re-administered the Personality Assessment Inventory and found that the appellant

was at low risk in all areas tested. Dr. Puig stated that there was no indication that the appellant possessed problematic, abhorrent, or antisocial behaviors. The Panel noted that Dr. Puig did not conduct a cognitive test on the appellant.

During the Panel meeting, the appellant reported that he works for a day program for developmentally disabled children and had no disciplinary issues. Moreover, he clarified his driving history. The Panel reviewed several critical items found in the appellant's testing. The appellant had repeatedly responded that he was uncertain as to what was meant by the test questions. Upon its evaluation, the Panel was not concerned with the appellant's behavioral history, noting that he had no issues in his work performance or had legal or substance abuse issues. Although the appellant may have had motor vehicle accidents, the Panel determined that there was no other evidence of impulsivity in his motor vehicle history which may be indicative of a psychological factor that would disqualify the appellant from employment. However, the Panel had concerns with the appellant's cognitive ability, given that he scored at the third percentile in the Wonderlic Personnel Test and did not understand the meaning of certain test questions. The Panel indicated that the Wonderlic Personnel Test does not provide a thorough assessment of cognition. 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 "which should include more in-depth cognitive assessment" of the appellant.

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.

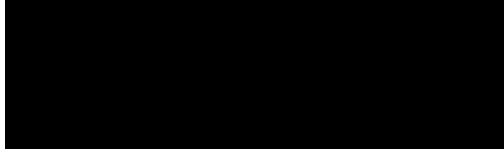
ORDER

The Commission therefore orders that D.B. be administered an independent psychological evaluation. 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 reconsideration of this matter, copies of the independent

evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

D.B. is to contact Dr. Robert Kanen, the Commission's independent evaluator, in order to arrange for an appointment within 15 days of the issuance of this determination in order to arrange for an appointment. Dr. Kanen's address is as follows:

Dr. Robert Kanen



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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF AUGUST, 2018

Deirdre L. Webster Cobb

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Chairperson
Civil Service Commission

Inquiries
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c: D.B.
Jason Asuncion
Dr. Robert Kanen
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Annemarie Ragos