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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of T.L., Correction  
Officer Recruit (S9988M),  
Department of Corrections

CSC Docket No. 2014-1176

Medical Review Panel

ISSUED: **MAY 08 2015** (BS)

T.L., represented by Jay Chatarpaul, Esq., appeals her rejection as a Correction Officer Recruit candidate by the Department of Corrections and its request to remove her name from the eligible list for Correction Officer Recruit (S9988M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on August 27, 2014, which rendered the attached report and recommendation on August 28, 2014. Exceptions and cross exceptions were filed by the parties.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Matthew Guller (evaluator on behalf of the appointing authority) carried out a psychological evaluation of the appellant and characterized the appellant as being in the average intellectual functioning range, being unemployed in the seven months preceding her evaluation, and as previously serving in the U.S. Marine Corps, receiving an honorable discharge at the rank of E-5. Dr. Guller noted that the appellant was currently receiving a disability pension from the military but was vague about the reasons for the disability. The appellant was receiving 60% disability: 10% each for her back, right ankle, and Tinnitus, and 30% assigned for "[a]djustment disorder with anxiety with dyssomnia;<sup>1</sup> non-specific

<sup>1</sup> Dyssomnia, by definition, is a disturbance of the body's natural resting and waking patterns, and covers a range of specific sleep disorders including, but not limited to, insomnia, sleeplessness, the inability to sleep, and wakefulness.

(claimed as insomnia/sleep disturbance)." Dr. Guller was concerned that this was reportedly an active condition but that the appellant never sought treatment. Dr. Guller opined that, presumably, the appellant still suffers from some adjustment issues, as well as insomnia, conditions that are not seen as consistent with effective performance in the role of a Correction Officer Recruit. As a result, Dr. Guller failed to recommend the appellant for employment as a Correction Officer Recruit.

Dr. David Gomberg (evaluator on behalf of the appellant) carried out a psychological evaluation of the appellant and he noted that the appellant denied any current sleep disturbance and also the presence of any anxiety, despite the mention of that concern in her discharge from the military. In view of the results of the psychological testing and the behavioral history, Dr. Gomberg characterized the appellant as confident, hardworking, industrious, organized, and responsible. Dr. Gomberg concluded that the appellant was "eminently qualified" for employment as a Correction Officer Recruit.

The evaluators on behalf of the appellant and the appointing authority reached differing conclusions and recommendations. The Panel concluded that the negative recommendation finds support in the appellant having been assessed with disability adjustment issues when the appellant left military service that may impact on her ability to perform the duties of a Correction Officer Recruit. Although the appellant answered the Panel's questions, the Panel was concerned that about the casual nature of the appellant's ability to both understand and respond appropriately to her disability status. Initially, she described the reason for the psychological aspect of her disability as a result of having difficulty returning to a healthy sleep cycle when she returned from overseas. The appellant indicated that she was no longer having difficulties and expected to be re-evaluated at "some point" regarding her disability status but, to date, has failed to address the situation despite ample opportunity and her continuing to receive disability benefits. The Panel was very concerned by the appellant's lack of significant initiative in resolving that situation, given that she was originally evaluated in November 2012 and that it was again brought to her attention during the July 2013 interview. The Panel noted that as the appellant is applying for a position which requires her to uphold rules and regulations, the fact that she continues to receive compensation for well over a year for a disability that she asserts no longer exists, is not consistent with what is expected of someone who aspires to a role in law enforcement. The Panel concluded that, should the appellant offer proof that she took definitive steps to correct her disability status, she may then be seen as a viable candidate. Accordingly, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification

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for Correction Officer Recruit, justified the removal of the appellant's name from the eligible list.

In the exceptions filed on behalf of the appellant, the appellant argues that, after being given a series of psychological tests, Dr. Guller spent approximately 15 minutes speaking with her, after which he found her psychologically unfit for the position. On the other hand, Dr. Gomberg also administered a number of psychological tests and contacted two individuals who served in the Marines with her as part of his evaluation process and he found her to be psychologically suitable for the position. Additionally, the appellant argues that even though her attorney was late for the Panel meeting, the Panel proceeded with the meeting without his presence. The appellant contends that the Panel's refusal to delay the meeting for even 20 minutes or a half hour to await her attorney's arrival and instead proceed with the hearing without the presence of her attorney, was "unreasonable and capricious in and of itself." With regard to her disability status, the appellant cites *N.J.A.C. 4A:4-6.1(a)3* which provides in pertinent part that an injury incurred in the armed forces shall not be considered a disqualification unless the Chairperson of the Civil Service Commission or designee considers the condition incapacitating. The appellant asserts that the appointing authority maintains the burden of proof in this case and it has failed to demonstrate that the appellant is psychologically unfit to perform the duties of the subject position. The appellant argues that there is no credible evidence to support the findings of Dr. Guller, whose report and recommendation was upheld by the Panel. The appellant argues that her name should be returned to the list or, in the alternative, she should be sent for an independent evaluation to determine her psychological suitability for work as a Correction Officer Recruit.

In its cross exceptions, the appointing authority disputes the appellant's assertion that her interview with Dr. Guller lasted only 15 minutes and submitted a signed statement from the appellant in which she indicated that Dr. Guller spent 35 minutes interviewing her. In addition, the appointing authority asserts that multiple factors determine a candidate's suitability for working in a corrections environment. Such factors include, but are not limited to, multiple written test batteries as part of the psychological screening, medical examinations, and non-medical matters such as the behavioral record which is indicative of an applicant's work ethic, judgment, resilience, and integrity. The appointing authority notes that candidates who are poorly suited for work in law enforcement demonstrate a variety of counterproductive behaviors or characteristics which include lack of initiative, unwillingness to follow rules, argumentativeness, and over-aggressiveness. Job-relevant risk factors also include mental or emotional conditions that would reasonably be expected to interfere with safe and effective job performance. In this regard, the appointing authority refutes the appellant's assertion that the decision to remove her from consideration was based on "guesswork, suppositions,

presumptions, and speculations.” Rather, the appointing authority asserts that the appellant was receiving a 30% disability pension from the military for “an adjustment disorder with anxiety and dyssomia: non-specific,” but asserted to Dr. Guller, Dr. Gomberg, and the Panel that she is free from any adjustment or sleep disorders and claimed to have had no further difficulties. However, the appellant provided no evidence of this and continues to collect disability for this condition. The appointing authority argues that it is not the domain or responsibility of its evaluator or the Panel to come up with a diagnosis or prognosis for an appellant’s condition but to simply evaluate the appellant’s suitability based on the data and other information provided. The appointing authority further notes that Dr. Gomberg, the appellant’s own evaluator, provided no diagnosis or prognosis to support the appellant’s claims that she was free of her disorder. The appointing authority contends that, since Correction Officer Recruits have a demanding schedule and are required to do shift work and mandatory overtime, it is within its discretion to disqualify an individual with an active condition that could be reasonably expected to interfere with safe and effective job performance. Accordingly, the appointing authority respectfully requests that the appellant’s removal be upheld.

### CONCLUSION

The Class Specification for Correction Officer Recruit is the official job description for such State positions within the merit system. According to the specification, an Officer is involved in providing appropriate care and custody of a designated group of inmates. These Officers must strictly follow rules, regulations, policies and other operational procedures of that institution. Examples of work include: encouraging inmates toward complete social rehabilitation; patrolling assigned areas and reporting unusual incidents immediately; preventing disturbances and escapes; maintaining discipline in areas where there are groups of inmates; ensuring that institution equipment is maintained and kept clean; inspecting all places of possible egress by inmates; finding weapons on inmates or grounds; noting suspicious persons and conditions and taking appropriate actions; and performing investigations and preparing detailed and cohesive reports.

The specification notes the following as required skills and abilities needed to perform the job: the ability to understand, remember and carry out oral and written directions and to learn quickly from written and verbal explanations; the ability to analyze custodial problems, organize work and develop effective work methods; the ability to recognize significant conditions and take proper actions in accordance with prescribed rules; the ability to perform repetitive work without loss of equanimity, patience or courtesy; the ability to remain calm and decisive in emergency situations and to retain emotional stability; the ability to give clear,

accurate and explicit directions; and the ability to prepare clear, accurate and informative reports of significant conditions and actions taken.

The Civil Service Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and found that the psychological traits, which were identified and supported by test procedures and the behavioral record, relate adversely to the appellant's ability to effectively perform the duties of the title. The Commission is not persuaded by the appellant's exceptions. As pointed out in the appointing authority's cross exceptions, the Commission recognizes that an individual with active dyssomnia is not a good match for working in a correctional environment. The appellant has failed to provide any evidence that she is now free from this disorder as she claims. Further, the Commission has concerns that if the appellant was free from dyssomnia as she claims, that she continues to collect a disability pension from the military for this condition. This, in and of itself, raises integrity issues for someone who aspires to a career in law enforcement and would constitute sufficient cause for her removal from consideration.

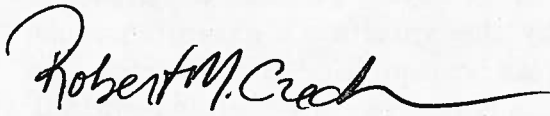
With regard to the appellant's attorney's argument that since he was late for the Medical Review Panel meeting, the Panel could have delayed the proceedings until his arrival, the Commission is unpersuaded. The Commission notes that the Panel meets in a borrowed facility, its doctors' time is limited, and four cases are scheduled to be heard per meeting. Additionally, notices indicating the time and location of the Panel meeting are mailed to the parties well in advance of the meeting date. To delay the proceedings because one individual who failed to arrive on time is unfair to the rest of the parties who did arrive on time. The Commission further notes that the Panel conducts a thorough review of the test data, reports and recommendations of the evaluators, and any other information presented to it prior to the meeting. In this regard, the Panel meeting is not a plenary hearing where testimony is taken, and does not require the presence of the appellant, her representative or the evaluators whose reports are reviewed. Accordingly, having considered the record and the Medical Review Panel's report and recommendation issued thereon and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Review Panel's report and recommendation.

#### ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that T.L. is psychologically unfit to perform effectively the duties of Correction Officer Recruit and, therefore, the Commission orders that her 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 6TH DAY OF MAY, 2015



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**Attachments**

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