

A-5



STATE OF NEW JERSEY

In the Matter of Charlayne Powell
City of Paterson,
Fire Department

**DECISION OF THE
CIVIL SERVICE COMMISSION**

:
:
:
:
:
:
:
:
:
:
:
:
:
:

CSC DKT. NO. 2015-2142
OAL DKT. NO. CSR 03689-15

ISSUED: SEPTEMBER 16, 2105 BW

The appeal of Charlayne Powell, Firefighter, City of Paterson, Fire Department, removal effective February 16, 2015, on charges, was heard by Administrative Law Judge Jeffrey A. Gerson, who rendered his initial decision on August 21, 2015 reversing the removal. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on September 16, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to her permanent position.

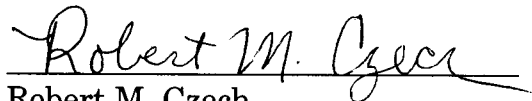
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Charlayne Powell. The Commission further orders that appellant be granted back pay, benefits, and seniority for the period of separation to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
SEPTEMBER 16, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 03689-15

AGENCY DKT. NO. N/A

**IN THE MATTER OF CHARLAYNE POWELL,
CITY OF PATERSON FIRE DEPARTMENT.**

Charles E. Tempio, Esq., for appellant Charlayne T. Powell
(Tempio & Ramos, attorneys)

Steven Glickman, Esq., for respondent City of Paterson Fire Department

Record Closed: June 29, 2015

Decided: August 21, 2015

BEFORE **JEFFREY A. GERSON, ALJ**:

STATEMENT OF THE CASE

Firefighter Charlayne Powell (Powell) was sent for a fitness for duty examination by her employer, the City of Paterson (City of Paterson), after she took a leave of absence at the advice of her treating psychologist. On May 16, 2012, Dr. Scasta, the first psychologist to conduct a fitness for duty examination, was unable to conclude whether Powell was fit for duty, and suggested she return to work and be observed by her supervisors. (Joint Ex. 5.) City of Paterson rejected that result, and directed Dr. Scasta to re-evaluate Powell, and determine conclusively whether she was fit for duty. On June 27, 2012, Dr. Scasta re-examined Powell, and concluded that she was not fit

for duty. (Joint Ex. 6.) On November 29, 2012, City of Paterson filed an application requesting involuntary disability benefits for Powell. That application was denied after the independent medical examiner, Dr. Filiponne, concluded that Powell was not totally and permanently disabled from the performance of her duties. (Joint Ex. 13.) On January 2, 2013, an independent medical examiner, Dr. Gollin, concluded that Powell's depression had resolved, and she was fit for duty. (Joint Ex. 9.) Thereafter, on March 16, 2013, Powell was re-evaluated by Dr. Gallina, who concluded that Powell was not fit for duty. (Joint Ex. 11.) Two psychologists, Drs. Scasta and Gallina, found Powell unfit for duty, and two psychologists, Drs. Filiponne and Gollin found Powell fit for duty. The departmental hearing officer concluded that Powell should undergo another fitness for duty examination, the results of which would be dispositive. On January 30, 2015, Dr. Schlosser evaluated Powell and found that she was not fit for duty.

TESTIMONY

Dr. Lewis Z. Schlosser (Dr. Schlosser)

Dr. Schlosser identified Joint Exhibit Seventeen as his curriculum vitae. (Joint Ex. 17.) He is the owner and managing partner of The Institute for Forensic Psychology, which almost exclusively performs psychological evaluations for public safety agencies.

Dr. Schlosser identified Joint Exhibit Fifteen as his report. (Joint Ex. 15). Prior to examining Powell, Dr. Schlosser reviewed her previous fitness for duty examinations and the hearing report.

Specifically, Powell completed Minnesota Multiphasic Personality Inventory-2 (MMPI-2), the PAI, the Beck Depression Inventory, the Mooney Problem Checklist, a brief IQ test, and a biographical summary, which is a life-history questionnaire. Dr. Schlosser then reviewed the test data and conducted a clinical interview. The clinical interview allowed Dr. Schlosser to further evaluate whether Powell presents any psychopathology, and whether Powell is fit for duty.

Dr. Schlosser identified Joint Exhibit Sixteen as the MMPI-2 that he administered to Powell. (Joint Ex. 16.) The MMPI-2 is the most widely accepted personality test. This MMPI-2 presents Powell as highly defensive. The first page of the MMPI-2 is a graph; the right section portrays the validity of the assessment, and the left section portrays the clinical findings of the assessment. The validity scale indicates that Powell demonstrated clinically significant levels on the "L" and "K" scales, graphically depicted on the first page of the MMPI-2. The "L" score measures the subject's willingness to admit to common faults most individuals experience and recognize. The "K" scale also measures the subject's willingness to admit to having problems. Clinically significant scores on the validity side of the graph moot findings on the clinical side of the graph. Notably, Powell answered 73 percent of questions as "false," which indicates she was extremely unlikely to admit to fault. Dr. Schlosser testified that a MMPI-2 subject can demonstrate both validity and the absence of psychopathology. Dr. Schlosser emphasized that Powell's "L" score was not just clinically significant, but highly elevated, evidencing extreme defensiveness. Powell's "K" score was moderately elevated.

Even though Powell's scores on the validity side of the graph mooted the clinical findings on the left side of the graph, Dr. Schlosser noted that Powell still scored very high on the clinical side for "PD," which stands for "psychopathic deviant," an antiquated term. Individuals who score high on this scale tend to be impulsive, make poor judgments, have poor frustration tolerance, tend to have difficulties with anger, and difficulties with interpersonal relationships.

Dr. Schlosser clarified that he did not feel the "L" and "K" scores completely invalidated the clinical findings, only that Powell responded in a highly defensive manner. Elevated "L" and "K" scores would suggest that the clinical scores should be even higher, but does not completely invalidate the clinical scores. Conversely, elevated "L" and "K" scores suggest that any indication of clinically significant psychopathology is actually an underrepresentation. However, Dr. Schlosser equivocated on whether the clinical results of his MMPI-2 were invalidated by the "L" and "K" scores, and directly agreed and disagreed that the scores were invalid. When questioned by City of Paterson's counsel, Dr. Schlosser insisted the clinical scores were

not invalid, but when questioned further Dr. Schlosser agreed the clinical scores were invalid.

Dr. Schlosser testified that even if the MMPI-2 he administered is completely invalid, he had a sufficient basis to determine that Powell was unfit for duty based on the inconsistencies in her clinical interview. If a subject is not willing to be open, honest, and demonstrate integrity, then that subject cannot be trusted to enter people's home and perform the public services that a firefighter position requires. Moreover, other firefighters need to be able to trust Powell in life-or-death situations. Accordingly, Powell's inconsistencies demonstrate that when threatened, she is apt to behave in a self-serving manner, and not perform well in a team.

During the interview, Schlosser found Powell inconsistent in her answers. She was unable or unwilling to offer specific information, when asked. As Dr. Schlosser reviewed Powell's prior fitness for duty examinations, he found that her answers were inconsistent. Dr. Schlosser did not confront Powell regarding her inconsistencies, because he did not see that as part of his role as an independent forensic evaluator. Rather, his role is to gather data. If he noted a subject's inconsistency to the subject, during the interview, that might prompt the subject to become even more defensive, distort responses, and compromise the integrity of the examination.

One inconsistency was related to whether Powell engaged in self-injurious behaviors. Dr. Scasta indicated that she reported self-injurious behavior, specifically, cutting her wrists. Dr. Schlosser testified that self-injurious behavior is a symptom of serious psychopathology. However, Dr. Schlosser conceded that he did not know when, or if, Powell in fact engaged in self-injurious behavior. On cross, Dr. Schlosser clarified that during his clinical interview, Powell denied engaging in self-injurious behavior, such as cutting her wrists. However, Dr. Scasta indicated that she did cut her wrists. Accordingly, Dr. Schlosser considered that an inconsistency. Moreover, Dr. Schlosser added that such behavior is indicative of serious psychopathology, and trusted that other mental health professionals, such as Dr. Scasta, would not erroneously include such a serious note in a fitness for duty evaluation. He agreed that

the assertion that Powell engaged in self-injurious behavior is not included in any other report.

Dr. Schlosser reached the conclusion that Powell was not fit for duty based on her defensiveness on the assessments, inconsistencies in the interview, and evidence of psychopathology in her psychological testing. He noted that her "PD" (psychopathic deviance) scale was significantly elevated.

Dr. Schlosser has conducted many fitness for duty examinations on subjects that have previously been assessed by other psychologists, and have conflicting MMPI-2 results. He explained that a subject's responses can indicate an expected outcome. Dr. Scasta administered the first MMPI-2 to Powell in 2012, when she had just been cleared to return to work by her psychologist, Dr. Bizarro. Accordingly, the validity scale of that MMPI-2 indicates that she approached that assessment in an open and forthright manner. However, the clinical scales of that MMPI-2 are significantly elevated. (Joint Ex. 7.) Specifically, her "PD," "PA," and "PT" scores were significantly elevated. "PA" indicates paranoia, and measures the extent the subject is mistrustful and suspicious of others. On page four, the "content scales profile" indicates that Powell's score was clinically significant on the "ANG" scale, which indicates anger.

Powell's subsequent MMPI-2 assessments indicated that she was more defensive, because the first MMPI-2 assessment suggested that Powell was unfit for duty. He suggested that the first MMPI-2 led Dr. Scasta to the conclusion that Powell was unfit, because despite Dr. Bizarro's conclusion that she was ready to return to work, the MMPI-2 revealed significant psychopathology. Moreover, Powell scored very high on the "L" and "K" scales, indicating defensiveness, on the final MMPI-2 that Dr. Schlosser conducted. At that point, Powell was aware that the hearing officer concluded that Powell's fitness for duty would be determined by the final MMPI-2, administered by Dr. Schlosser.

Dr. Schlosser identified Joint Exhibit Nine as Dr. Gollin's narrative report on Powell from 2013. (Joint Ex. 9.) He identified Joint Exhibit Ten as Dr. Gollin's MMPI-2 report on Powell, conducted in 2013. (Joint Ex. 10.) Dr. Schlosser explained that he

and Dr. Gollin used the same MMPI-2, but used different interpretive reports. Dr. Schlosser used the interpretive report commonly used for fitness for duty examinations for current employees, while Dr. Gollin used the interpretative report commonly used to screen applicants, prior to employment. He explained that the interpretative reports are different, because the normative groups are different.

He explained that the validity graph of Dr. Gollin's MMPI-2 includes two lines. The solid line indicates Powell's scores, and the dotted line indicates the mean score for firefighter applicants. Dr. Schlosser noted that the validity scale indicate that Powell was defensive, despite the fact that this MMPI-2 was administered by her own doctor. The "L," "K," and "S" scales were elevated, but not as elevated as the validity scales on the MMPI-2 Dr. Schlosser administered. Dr. Schlosser conceded that Dr. Gollin's MMPI-2 does not indicate clinically significant scores, but the "PD" scale is "nearly" clinically significant. However, Dr. Schlosser emphasized that the validity scales indicate that Powell was defensive in completing Dr. Gollin's MMPI-2, so the clinical scales are probably deceptively low.

Dr. Schlosser identified Joint Exhibit Six as Dr. Scasta's addendum on Powell, dated June 27, 2012. (Joint Ex. 6.)

Dr. Schlosser identified Joint Exhibit Seven as Dr. Scasta's MMPI-2 Corrective Interpretive Report on Powell. (Joint Ex. 7.) He explained that a Corrective Interpretive Report indicates that the narrative interpretive report should be disregarded. When a psychologist configures the computer to generate a report, the psychologist can choose certain criteria. Dr. Schlosser did not clearly explain why the criteria used to generate this narrative report were incorrect, but suggested criteria for correction officers and inmates were improperly applied. Dr. Schlosser asserted that he could interpret the graphical data without the use of a computer algorithm.

He further explained that this MMPI-2 interpretive report relied on community norms; this is an MMPI-2 that could be administered to any individual in the community, generally. He asserted that this MMPI-2 was an accurate assessment of Powell's condition. Dr. Schlosser did not explain why an MMPI-2 interpretive report for the

general community is an accurate assessment, but an MMPI-2 interpretive report for applicants is not accurate. However, he later asserted that both his and Dr. Scasta's MMPI-2 interpretive reports were appropriate for fitness for duty examinations, while Dr. Gollin's MMPI-2 interpretive report was only appropriate for applicants. Accordingly, Dr. Schosler seemed to suggest that the "community" norms used in Dr. Scasta's interpretive report were norms of the public safety employee community, specifically.

Dr. Schlosser Cross-Examination

On cross, Dr. Schlosser conceded that Powell completed a Beck Depression inventory, which indicated that Powell was not depressed. Moreover, Dr. Schlosser was aware that Powell was ultimately found unfit for duty because she was depressed. He fully agreed that as of his examination, there was no clinical evidence that Powell was depressed.

On cross, Dr. Schlosser agreed that Powell only had two minor legal issues; an open-container charge from 2005, and some involvement with DYFS (now DCP), though not necessarily criminal, when she was trying to regain custody of her son.

Dr. Schlosser further clarified that Dr. Scasta did not initially determine that Powell was unfit for duty. Rather, he initially found that she should return to work to be observed in her professional environment. However, City of Paterson rejected that recommendation, and directed Dr. Scasta to determine whether Powell was fit for duty, or unfit for duty. Subsequently, Dr. Scasta found that Powell was unfit.

Dr. Schlosser did not know who referred Powell to Dr. Gollin, who found Powell fit for duty. She was then referred to Dr. Gallina, who found her unfit for duty.

Dr. Schlosser conceded that his conclusions are generalized and that people with MMPI-2 scores similar to Powell's

tend to make impulsive, poor judgments and engage in behaviors that cut against societal conventions. There is a tendency to be rebellious toward authority figures, and they

have limited frustration tolerance. In addition, people with this test profile are described by others as immature, selfish, and narcissistic. Lastly, people with this test profile tend to be aggressive and hostile and have problematic interpersonal relations.

[Joint Ex. 15.]

Dr. Schlosser could not identify any examples of Powell's behavior, prior to her treatment with Dr. Bizarro, which reflected any of these characteristics.

Dr. Schlosser conceded that he did not receive any reports regarding Powell's disciplinary history. Rather, he received the hearing officer's report and the four previous fitness for duty examinations.

Dr. Schlosser testified that he reviewed Joint Exhibit Nineteen, Dr. Gollin's Addendum. (Joint Ex. 19.) However, Dr. Gollin's report did not change Dr. Schlosser's opinion.

Dr. Daniel Gollin (Dr. Gollin)

Dr. Gollin became licensed in New Jersey in 2008. He's seen thousands of patients, and has written thousands of reports. He attended Rutgers University, then New Jersey Medical School. He completed his psychiatric residency at Mt. Sinai hospital in Manhattan. He has conducted about fifty fitness for duty examinations. Of those, most were police officers, and a few were firefighters.

Dr. Gollin interviewed Powell on January 2, 2013. He conducted a very lengthy interview, which includes clinical observations and obtaining a psychological and medical history. He then administers an MMPI-2 and MCMI-3. The MCMI-2 overlaps considerably with the MCMI-3, but addresses Axis I acute symptomatology. He reviewed the reports of Dr. Scasta, Dr. Bizarro, Dr. Gallina, Dr. Fillipone, and Dr. Schlosser.

Dr. Gollin testified that he did not have Dr. Scasta's initial report when he first examined Powell. (Joint Ex. 5.) However, he did have Dr. Scasta's supplemental report. (Joint Ex. 6.)

Dr. Gollin disagreed with Dr. Scasta's diagnosis of major depression. Major depression is an acute disorder. If the depression is alleviated, and does not return, that is considered a single episode of depression. If the depression returns, that is considered recurrent major depression. The symptoms must persist for a certain amount of time, and must interfere with the patient's life. Both episodic and recurrent major depressions are contrasted to a personality disorder, which is generally a chronic, life-long condition. He explained that a person experiencing a major depressive episode can respond similarly to a person who has a personality disorder on a personality test. For example, a person experiencing a depressive episode may have more dysphoria, or a more negative outlook, which may not accurately reflect the person's underlying personality.

He noted that when Dr. Scasta administered the first MMPI-2 to Powell, she had not fully stabilized from her depressive episode. When Dr. Gollin administered another MMPI-2, nearly a year later, Powell had received much more psychotherapy. He noted that Powell had "flirted" with psychiatric medications, but had not consistently taken her prescription, so her recovery was largely due to the psychotherapy with Dr. Bizarro.

Dr. Gollin noted that the MMPI-2 administered by Dr. Scasta was very similar to the MMPI-2 he administered. However, Dr. Gollin used the computer-generated narrative to help describe the results of the MMPI-2. He agreed with Dr. Schlosser that the narrative revealed that Powell was very defensive. However, the remainder of the computer-generated narrative explained that despite Powell's defensiveness, her clinical results were very normal. The computer-generated narrative did not include any of the indications of clinical psychopathology that Dr. Schlosser included in his interpretation. He emphasized that the computer generated narrative was not dependent on any particular job description or occupation, by applied to all subjects, generally.

Dr. Gollin noted that the main difference between the MMPI-2 that he administered and the MMPI-2 that Dr. Schlosser administered was Powell's defensiveness. Clearly, Powell was more defensive when she took the MMPI-2 with Dr. Schlosser. However, the clinical results are nearly identical, and any difference is within the margin of error. He agreed with Dr. Schlosser that Powell was probably less defensive on the MMPI-2 that he administered, because at that point, Powell had taken several fitness for duty examinations, and knew that Dr. Gollin was conducting an independent evaluation. In contrast, she knew that Dr. Schlosser was hired by her employer. Since the two previous doctors hired by City of Paterson, Dr. Scasta and Dr. Gallina, had found Powell unfit, she expected that Dr. Schlosser would find her unfit. She would naturally feel very guarded, and concerned that Dr. Schlosser would find her unfit. He explained that most individuals in that circumstance would appear defensive. In the rare cases that individuals are not defensive, a companion test, the MCMI-3 generally indicates defensiveness.

Dr. Gollin identified Joint Exhibit Eleven as Dr. Gallina's report. (Joint Ex. 11.) Dr. Gollin disagreed with Dr. Gallina's findings, and opined that Dr. Gallina's narrative conflicted with his rather unremarkable clinical findings. The only clinical observation that Dr. Gallina includes in his report is that Powell's affect is a little neutral. However, in his conclusions, Dr. Gallina states that Powell suffers from numerous pathologies and is unfit, though those conclusions are not supported by his clinical observations. For example, Dr. Gallina concluded that Powell was apt to make poor judgments, but observed that her intelligence was average and she had a clear sensorium.

He noted that Dr. Gallina concluded that "her difficulty with interpersonal relations [will] likely continue to undermine morale and interfere with the administration of the department as supervisors are taken away from their firefighting duties to manage FF Powell's anger and manipulateness." (Joint Ex. 11.) However, Dr. Gallina had no objective evidence that Powell was angry or manipulative at work. Rather, Dr. Gallina's conclusion was based solely on one disciplinary report provided by City of Paterson, which indicated that Powell was late to work on several occasions, during a discrete period in July and August 2011. The report noted that when Powell was confronted about her lateness, she muttered something disrespectful under her breath. Dr. Gollin

testified that as Powell was still experiencing a depressive episode at that time, her behavior was not typical of her personality. He noted that anger and irritability are atypical features of depression. Dr. Gallina further noted that Powell had no issues with other authority figures, which suggests that her episodic irritability was a symptom of depression, rather than her underlying personality. Dr. Gollin noted that Powell's neutral affect could be a symptom of her underlying obsessive compulsive personality. People with obsessive compulsive personalities generally appear constricted, and do not show their emotions.

Dr. Gollin identified Joint Exhibit Nineteen as his addendum, in which he reviewed and commented on Dr. Gallina's report. (Joint Ex. 19.) Dr. Gollin found a number of inconsistencies between Dr. Gallina's clinical observations and conclusions. Notably, Dr. Gallina concluded that Powell suffered from anxiety, but noted in his clinical observations that Powell did not seem anxious. Dr. Gallina notes that he administered various assessments, but does not include the results of those assessments in his report. Accordingly, Dr. Gallina's conclusions were not only inconsistent with Dr. Gollin's conclusions; Dr. Gallina's conclusions were internally inconsistent.

Dr. Gollin identified Joint Exhibit Thirteen as Dr. Filippone's report. (Joint Ex. 13.) Dr. Gollin noted that despite the fact the Dr. Filippone wrote his report after Dr. Gollin, and did not review Dr. Gollin's report, they came to very similar conclusions. Dr. Gollin conceded that Dr. Filippone examined Powell to determine whether she qualified for ordinary disability benefits, not whether she was fit for duty.

When Dr. Gollin evaluated Powell again, after Dr. Schlosser's fitness for duty examination, Dr. Gollin asked Powell about some of Dr. Schlosser's conclusions, such as the assertion that Powell engaged in self-injurious behavior. Dr. Gollin fully agreed that if Powell engaged in self-mutilation, that would indicate a serious personality disorder, and psychopathology. However, he noted that while Dr. Schlosser relied heavily on Dr. Scasta's note about Powell's alleged self-injurious behavior, Dr. Scasta merely mentioned the alleged self-mutilation in passing. When he interviewed Powell, she clarified that she told Dr. Scasta that she had thought of self-injurious behavior, but never acted on those thoughts. Moreover, Powell had thoughts of self-injurious

behavior years ago, when she was in an abusive relationship, but not recently, when she went on sick leave from her job. Dr. Gollin then examined her arms, and found no evidence of self-mutilation. Dr. Gollin has treated patients with severe personality disorders, who do engage in self-injurious behavior, and their arms are generally heavily scarred. Self-injurious behavior is considered highly indicative of a cluster of personality disorders, such as borderline personality disorder.

Dr. Gollin testified that Dr. Schlosser's report did not reveal any new information about Powell. Dr. Gollin emphasized that the results of the MMPI-2 administered by Dr. Schlosser did not match Dr. Schlosser's own interpretative report, and presumably, the computer-generated narrative. He agreed that an individual with an elevated "PD" scale may have many of qualities Dr. Schlosser described in his report. However, if the subject only demonstrates slightly elevated "PD" scores, than the individual will only demonstrate insignificant behaviors, and not all of the behaviors Dr. Schlosser enumerated. In other words, if a subject's scores are just above the clinically significant threshold, any pathology would be minimally disruptive to the subject's life. Moreover, the only elevated subscale of the "PD" scale, Social Imperturbability, is also used to score validity. Accordingly, if a subject has an elevated validity scale, the subject will probably have an elevated Social Imperturbability sub-scale.

Dr. Gollin explained that everybody has some psychopathology. Accordingly, elevations on the MMPI-2 can be micro-analyzed, or considered in context.

Accordingly, Dr. Gollin concluded that Powell was fit for duty. He based his opinion on his own observations, the various fitness for duty examinations, and independent tests.

Dr. Gollin Cross-Examination

On cross, Dr. Gollin conceded that Dr. Flippone is an independent medical examiner for the pension's board, and evaluated whether Powell was eligible for an ordinary disability pension. Accordingly, Dr. Filippone arguably had an incentive to find

Powell fit for duty (and ineligible for a disability pension). However, he did not suggest that Dr. Filippone was biased in favor of the pension board.

Dr. Gollin opined that he doesn't necessarily agree with Dr. Schlosser that if he had asked Powell about Dr. Scasta's notation regarding self-mutilation, Powell would have become even more defensive. If Dr. Schlosser asked Powell in a confrontational manner, she may have become defensive, but if he asked Powell in a non-judgmental manner, she would not necessarily become defensive (particularly if she actually did not engage in self-mutilation).

On cross, Dr. Gollin explained that he has never had a patient who engaged in self-injurious behavior and did not have scars. He explained that a patient who engages in self-injurious behavior typically does so repeatedly, resulting in numerous scars in the same area.

On cross, Dr. Gollin explained that the MMPI-2 includes a computer-generated narrative, which describes the subject's personality, based on the numeric scores. He agreed that a psychologist should consider all available data in drafting conclusions, but explained that the computer-generated narrative is the standard interpretation of the MMPI-2 results. The computer-generated narrative is a detailed, inclusive, standard report. For example, the MCMI-3 report indicated that Powell may have an obsessive-compulsive personality disorder. The psychologist would explore various indicators to determine whether the Powell meets the clinical criteria for obsessive-compulsive personality disorder.

On redirect, Dr. Gollin clarified that even if he does not use the computer-generated narrative, he never completely disregards it. Rather, if he disagrees with the conclusions of the computer-generated narrative, he notes that in his report along with his reasons for the disagreement. However, he will focus on the parts of the computer-generated narrative that he feels are most relevant and not necessarily include the entire computer-generated narrative, word for word.

On cross, Dr. Gollin identified Joint Exhibit Nine as his own report. (Joint Ex. 9.) Dr. Gollin's report notes that Powell was referred by Dr. Bizarro. Dr. Gollin did not speak to Dr. Bizarro before he evaluated Powell, but Dr. Gollin did know that Dr. Bizarro cleared Powell to return to duty. Dr. Gollin read Dr. Bizarro's notes after he completed the fitness for duty examination.

On cross, Dr. Gollin agreed with Dr. Schlosser that the position at issue must be considered when conducting a fitness for duty examination. He agreed that public safety employees must be held to a higher standard.

On cross, Dr. Gollin acknowledged that when Dr. Bizarro cleared Powell to return to work in April 2012, Powell may have not fully recovered from the depressive episode (as evidenced by the results of the MMPI-2 that Dr. Scasta administered).

Dr. Gollin testified that presently, Powell has learned to manage her stress, so additional stress would not impact her job performance.

Dr. Gollin explained that the different MMPI-2 reports that Dr. Schlosser referenced simply offer comparison statistics, in addition to the subject's own results. For example, an applicant MMPI-2 would include comparisons to other applicants. However, the underlying questions and the subject's responses are the same.

Charlayne Powell (Powell)

Powell testified that in her nine years with City of Paterson, she was never disciplined. The only written reprimand was a notation about her lateness.

Prior to her leave of absence, Powell did not have any breaks in her employment. She went on sick leave in August 2011, and was cleared to return to work in April 2012. When she was cleared to return to work, she was sent to Dr. Scasta for a fitness for duty exam. After that exam, City of Paterson filed paperwork for Powell to retire on involuntary ordinary disability benefits. Accordingly, she was sent to Dr. Filiponne for an independent medical evaluation to determine whether she qualified for ordinary

disability benefits. Dr. Filiponne determined that Powell was fit to perform the professional responsibilities of a firefighter, and the application for ordinary disability benefits was denied.

Powell testified that the stressors that were present in her life when she took a leave of absence are no longer present. Her son is no longer involved in gang activity, and is pursuing his GED. Moreover, her son planned to start a new job within the next week. Her relationship with her other son's grandparents has improved, and he was currently staying at her house. Finally, she learned to cope with the death of her friend and her friend's son. She is now able to perform the responsibilities of a firefighter.

She explained that she has never engaged in self-injurious behavior, and Dr. Scasta misquoted her. Dr. Scasta asked whether she had ever thought about harming herself. She divulged that in her early twenties, she was in an abusive relationship. The man made her get an abortion, and she was experiencing other unspecified stressors in her life. However, she testified that she prayed, and came to her senses. She divulged that information to Dr. Scasta, because she wanted to be truthful.

Powell explained that she was originally referred to Dr. Bizarro by her union president.

On cross, Powell acknowledged that the letter denying her pension indicated that she was not totally and permanently disabled, but did specify that she was fit for duty.

Powell explained that she is no longer being treated by a psychologist or psychiatrist. She conceded that she had taken anti-depressant medication for a few months after she began treatment with Dr. Bizarro. A nurse practitioner prescribed the medication.

DISCUSSION

Pursuant to the Civil Service regulations, an employee may be disciplined, and removed, if the employee is unable to perform the duties of the position. See N.J.A.C.

4A:2-2.3(a)(3). In a civil service removal appeal, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The appointing authority must establish that the employee is unfit to perform such duties by a preponderance of the credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

As ALJ Robinson recently observed, “[t]he Civil Service regulations do not provide guidelines or standards for the removal of an employee on a charge of psychological or mental unfitness. [However, t]here are rules that relate to the removal by the appointing authority from the eligibility list of a prospective appointee on such grounds.” In re Kingston, CSV 01371-10, Initial Decision, (November 26, 2012), modified, Comm. (February 7, 2013), <<http://njlaw.rutgers.edu/collections/oal/>>, aff’d, No. A-3288-12 (slip op.) <<http://njlaw.rutgers.edu/collections/courts/>> (citing N.J.A.C. 4A:4-6.5). Unfortunately, even the cited regulation does not include a substantive standard for psychological fitness, but rather, the procedural requirements for admission of psychological reports in such applicant appeals, specifically

Professional reports submitted by either of the parties shall include the following:

1. The professional’s signature, type of license (including the type of license or educational degree of any person contributing to the report), address, and the date;
2. The length of the examination or interview;
3. A specific diagnosis or statement of behavioral pattern or the specific reasons for a recommendation;
4. A finding as to the qualifications of the appellant for effective performance of the duties of the title; and
5. All tests that have been administered (for example, EKG, EEK, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

[N.J.A.C. 4A:4-6.5(f).]

Nevertheless, ALJ Robinson further recognized that the New Jersey Supreme Court has delineated a standard to determine whether candidates are fit to become

public service employees. See Kingston, supra, CSV 01371-10, Initial Decision (citing In re Vey, 124 N.J. 534, 544 (1991).)

In Vey, an applicant to a municipal police department was removed from the employment eligibility list after two fitness for duty evaluations found her to be unfit for a law enforcement position. Vey, supra, 124 N.J. at 536-38. The psychologists' opinions were partially based on the results of psychological tests that suggested the applicant had certain personality traits. Id. at 536-37. The Court began by acknowledging that "[t]he use of psychological tests to predict or evaluate employee job performance is a recognized part of the American workplace. Psychological tests, like intelligence or agility tests, are only as good as their correlation to actual job performance." Id. at 540. Moreover, "[p]articularly in the case of police and fire fighters, courts have had to examine the validity of various tests, including intelligence, agility, and psychological tests." Ibid. The determination of whether a psychological test is valid

involves three distinct steps. First, the employer must specify the trait or characteristic that the selection device is being used to identify or measure. Next, the employer must establish that the particular trait or characteristic is an important element of work behavior. Finally, the employer must "demonstrate by 'professionally acceptable methods' that the selection device is 'predictive of or significantly correlated' with the element of work behavior identified in the second step."

[Id. at 540-41 (quoting Craig v. County of Los Angeles, 626 F.2d 659, 662 (9th Cir.1980), cert. denied, 450 U.S. 919, 101 S. Ct. 1364, 67 L. Ed. 2d 345 (1981)).]

Validation is necessary, because "frequently the tests themselves incorporate, perhaps inadvertently, non-job-related criteria." Vey, supra, 124 N.J. at 541. The court recognized that "that such validation would not be required if the test disclosed a recognized mental disease or defect. Such a person might meet the criterion of the regulation that speaks of disqualification because the candidate is 'psychologically unfit.'"¹ Nevertheless, in Vey, the record included

¹ This term formerly appeared in the unrelated eligibility list regulations, which have since been repeatedly re-codified. See Ibid.

a variety of seemingly unremarkable personality traits with a conclusion that they demonstrate a below-average potential on the part of appellant. In psychological reviews of applicants, evaluators may use language containing euphemisms that are well understood by others in the field to convey a diagnosis of mental dysfunction. If that is so, then the diagnosis must be clearly stated because courts are simply unable to review agency action if there is a coded way of communicating significant medical findings.

[Id. at 542.]

In contrast, if “the evaluator simply notes various personality traits, then there ought to be some validation that the described personality traits do in fact correlate to job performance.” Id. at 542. The regulation “disqualifies a candidate for being ‘unfit,’ not for failing to be the best qualified for the job.” Ibid. The Court explained that “an evaluator may find that an applicant is impulsive. If that characteristic is shown to pose a danger of loss of control or of excessive use of force by officers, then it would certainly be a personality trait that could make one unfit to serve as a police officer.” Ibid. However, “if a personality trait such as excessive timidity or unwillingness to use force inhibits the effective performance of police duties, that too might constitute grounds for disqualification.” Id. at 542-543. In Vey, “evaluators found [the candidate] to have a below-average potential in part because they believed her ‘boldness’ and ‘suspiciousness’ could pose potential problems between Vey and her supervisors.” Id. at 543. However, the Court recognized that boldness and suspiciousness are not necessarily personality traits that render a candidate unfit; to the contrary, suspiciousness and boldness appear to be necessary personality traits of a good police officer. Ibid. Nevertheless, the Court remanded, as the record was “simply silent concerning whether and how the use of the identified personality traits has been validated as an accurate predictor of performance as a police officer.” Ibid.

Notably, on remand, the Merit System Board determined that Vey was not psychologically fit to be a candidate for a police officer position, and the Appellate Division and Supreme Court affirmed. See In re Vey, 272 N.J. Super. 199 (App. Div. 1993), aff’d, 135 N.J. 306 (1994). The Merit System Board’s decision, and the Appellate Division’s decision to affirm, relied heavily on the results of a MMPI. See Id.

at 202-03. However, the Merit System Board and Appellate Division also considered evidence of the candidate's past behavior.² Id. at 203. In affirming, the Supreme Court expressly approved the use of the MMPI as a tool to evaluate a candidate's psychological fitness, but also noted that "Vey's negative test results were consistent with 'the observed negative trend in [her] behavior and work performance" In brief, the facts and the psychological tests both point to the conclusion that appellant would not be an effective law-enforcement officer." Id. at 308 (citation to Appellate decision omitted).

In Kingston, ALJ Robinson applied the Vey standard to a fitness for duty removal case, to conclude that "there was no correlation between the alleged psychological dysfunction and the inability to perform the job functions of a laborer." See Kingston, supra, CSV 01371-10, Initial Decision. The appointing authority's expert "spoke of traits possessed by appellant but never demonstrated that the trait would prohibit appellant from performing the duties of a laborer or disqualifying him due to a specified psychological unfitness—some action or non-action or mental/brain dysfunction—that correlates with the standard of psychological unfitness." Ibid. In affirming, the Appellate Division expressly adopted the Vey test in the context of a fitness for duty removal, and held that

[w]hen an employer attempts to disqualify an employee based on psychological testing, the employer must follow a three-step validation process: (1) "the employer must specify the trait or characteristic that the selection device is being used to identify or measure"; (2) "the employer must establish that the particular trait or characteristic is an important element of work behavior"; and (3) "the employer must demonstrate by professionally acceptable methods that the selection device is predictive of or significantly correlated with the element of work behavior identified in the second step."

[Kingston, supra, No. A-3288-12 (slip op.) (quoting Vey, supra, 124 N.J. at 540-41.)]

² The candidate had previously worked for the appointing authority as a summer police officer, but sought a full-time position. See Vey, supra, 124 N.J. at 536.

The Appellate Division concluded that ALJ Robinson “applied the correct standard in requiring that [the appointing authority] ‘demonstrate by a professionally acceptable validation method that the traits or characteristics used to disqualify [Kingston] were actually related to job performance.’” Ibid.

Similarly, ALJ Celentano applied Vey to a fitness for duty removal case, very factual similar to the instant matter. See Kristensen v. Fairlawn, CSV 1736-02, Initial Decision, (January 6, 2002), adopted, Comm. (June 27, 2003), <<http://njlaw.rutgers.edu/collections/oal/>>. In Kristensen, an appointing authority filed charges to remove a police officer, due his alleged psychological unfitness. Initial Decision at *1. The appointing authority’s expert based her conclusion that the police officer was unfit solely based on certain personality traits attributed to the officer. Id. at *28-33. The appointing authority’s expert’s testimony “included references to questionable social situations, although no testimony was received relative to any social situations that were deemed to be questionable.” Id. at *28. She “focused on appellant’s susceptibility to certain diagnoses, such as anxiety or depression.” Ibid. ALJ Celentano noted that as here, the appointing authority’s expert’s first recommendation was for the police officer to attend “therapy for four to six weeks and reexamination to address fitness for duty again.” Ibid. Instead, the police officer “was terminated two days later.” Ibid.

In Kristensen, as here, the appointing authority’s expert found indications of “the ‘emergence of a psychiatric disorder.’” Ibid. However, “[t]here was no diagnosis of a present actual condition, of a psychiatric disorder.” Ibid. Rather, the appointing authority’s expert testified that the police officer’s “‘traits’ have the prospect of manifesting themselves at another time in the form of inappropriate behavior. However, she agreed that no medical condition precludes [the police officer] from performing his duties until the manifestations are seen in the form of inappropriate behavior.” Id. at *28-29.

ALJ Celentano recognized that “[c]ertainly, it would not be unusual that an individual would exhibit signs of agitation and anxiety in an employment-related psychological examination. One in such a position could well present as nervous and

apprehensive.” Id. at *29. Moreover, the police officer had a great number of concerns and stresses in his life.” Ibid. The appointing authority’s expert found “‘suggestions of certain symptoms or traits’ and indicates that certain behavior ‘may’ emerge, but does not specify when, or if, the traits or symptoms will emerge in the future, nor what the behavior issues may be.” Ibid. The appointing authority’s expert described the police officer’s behavior “as suggestive of ‘irresponsibility,’ yet there is no substantiation for this statement. The indication that ‘his judgment suggests that he may act impulsively’ is similarly vague and unsubstantiated and no basis is offered for this conclusion.” Ibid.

The police officer suffered many personal stressors, including his father’s recent death, back pain after a motor vehicle accident, a healing broken leg, an esophageal ulcer requiring hospitalization, and an ongoing IA investigation into his membership in a motorcycle club. Ibid. ALJ Celentano noted that in light of those stressors, the police officer felt “‘stressed’ and was then asked to report for a psychological evaluation. It would be unusual indeed if an individual with this many stressors in his life did not consider himself ‘stressed.’” Ibid.

ALJ Celentano distinguished all of the cases cited by the appointing authority, as every case involved an employee with multiple disciplinary incidents, but in Kristensen, the appointing authority did not file any other disciplinary charges. Id. at *30-31. Applying Vey, ALJ Celentano reasoned that the appointing authority’s expert’s “conclusions are precisely the type of vaguely worded conclusions the Court took issue with in Vey. The personality traits purportedly attributable to [the police officer had] not been demonstrated in any manner to correlate to his job performance or to be predictors of his future performance.” Id. at *33. Notably, “[t]he testing has not disclosed any recognized mental disease or defect. Nothing in the record suggest[ed] a basis for equating the traits identified with the alleged inability of the appellant to carry a firearm or to perform the other duties of his job.” Ibid. Even the appointing authority’s “expert agree[d] that no medical condition precludes appellant from performing his duties until the manifestations appear.” Ibid. Notably, however, ALJ Celentano’s summarization of the appointing authority’s expert’s testimony reflected that the expert “felt that the anxiety, depressive mood and unpredictability greatly affected appellant’s judgment, his ability to carry a weapon and his response to the community and to other

officers.” Id. at *7. Nevertheless, ALJ Celentano found the appointing authority had not established, by a preponderance of the credible evidence, that the police officer was psychologically unfit to perform the responsibilities of a police officer. Id. at *33.

Similarly, here, Dr. Schlosser conceded that his conclusions are generalized that people with MMPI-2 scores similar to Powell’s

tend to make impulsive, poor judgments and engage in behaviors that cut against societal conventions. There is a tendency to be rebellious toward authority figures, and they have limited frustration tolerance. In addition, people with this test profile are described by others as immature, selfish, and narcissistic. Lastly, people with this test profile tend to be aggressive and hostile and have problematic interpersonal relations.

[Joint Ex. 15.]

However, he could not identify any examples of Powell’s behavior, prior or subsequent to her treatment with Dr. Bizarro, which reflected any of these characteristics.

Dr. Schlosser emphasized two alleged inconsistencies in Powell’s interview as indicative of dishonesty; her assertion that she did not take medication for her condition, and her assertion that she never engaged in self-mutilation. More, he relied heavily on her alleged self-mutilation to conclude that Powell presented a serious psychopathology. However, the first inconsistency, with respect to whether Powell took psychiatric medication, appears to be a minor discrepancy, as Powell credibly testified that she only took such medication for a few months, several years prior to her evaluation with Dr. Schlosser. Moreover, the second inconsistency, with respect to whether Powell engaged in self-injurious behavior, was credibly refuted by both Dr. Gollin and Powell, herself. Powell candidly testified that she had thoughts of engaging in self-injurious behavior in her early twenties but never acted on those thoughts. Dr. Gollin credibly testified that he asked Powell about the alleged self-mutilation, and her response was consistent with her testimony. Moreover, Dr. Gollin examined Powell’s arms for evidence of self-injurious behavior, and found no scars. He testified credibly that a person who engages in self-injurious behavior would have numerous scars.

Accordingly, the record does not support the proposition that Powell engaged in self-injurious behavior, so any statements she made to that effect would not evidence dishonesty.

Dr. Schlosser testified that if a subject is not willing to be open, honest, and demonstrate integrity, then that subject cannot be trusted to enter people's home and perform the public services that a firefighter position requires. Moreover, other firefighters need to be able to trust Powell in life-or-death situations. Accordingly, Powell's inconsistencies demonstrate that when threatened, she is apt to behave in a self-serving manner, and not perform well in a team. However, the speculation that Powell may act in a self-serving manner in a life-threatening situation or perform poorly in a team based on one inconsistency in her final fitness for duty interview, stretches credibility. As both experts testified, and ALJ Celentano recognized in Kristensen, an employee subjected to a fitness for duty evaluation is naturally apt to be defensive or on-guard, as the employee's livelihood depends on the results of that evaluation. Evidence of defensiveness on an MMPI-2, or a minor inconsistency in a clinical interview, is expected.

With respect to the minor differences in the MMPI-2 assessments, Dr. Schlosser emphasized that his interpretative report was tailored to current firefighters, while Dr. Gollin's narrative report was tailored to firefighter applicants. However, Dr. Gollin explained that the distinction only relates to comparisons with a control group, but the computer generated narrative applies to all individuals, generally. Moreover, Dr. Schlosser did not include the computer-generated narrative of his MMPI-2, only his own interpretive report. Dr. Gollin credibly testified that a psychologist should at least consider the computer-generated narrative, and note the basis for any disagreements or deviations from that narrative.

In his report, Dr. Gallina concluded that Powell's "difficulty with interpersonal relations [will] likely continue to undermine morale and interfere with the administration of the department as supervisors are taken away from their firefighting duties to manage FF Powell's anger and manipulateness." (Joint Ex. 11.) However, Dr. Gallina had no objective evidence that Powell was angry or manipulative at work. Rather, Dr. Gallina's

conclusion was based solely on one disciplinary report provided by City of Paterson, which indicated that Powell was late to work on several occasions, during a discrete period in July and August 2011. The report noted that when Powell was confronted about her lateness, she muttered something disrespectful under her breath. Dr. Gollin testified that as Powell was still experiencing a depressive episode at that time, her behavior was not typical of her personality.

Other than the few episodes of tardiness, Powell has a completely unblemished disciplinary record. Considering Powell's nine years of service, the suggestions that Powell's alleged personality traits of anger, manipulateness, lack of honesty, and lack of integrity will interfere with her ability to perform her duties defies reason. Surely, if Powell did possess these negative personality traits, that would be reflected in a substantive disciplinary history. Indeed, there is no evidence in the record, whatsoever, that Powell actually engaged in any inappropriate or maladaptive behaviors, either at work or in her personal life.

In his first report, Dr. Scasta suggested that a notation about Powell appearing at work with "smeared lipstick" was indicative of a serious condition, Bi-Polar Disorder. He reasoned that "smeared lipstick is an icon for a Bipolar Disorder. It is possible that the smeared lipstick and disheveled look may have been due to a clandestine interaction with another firefighter which the patient would be unlikely to reveal." (Joint Ex. 5.) Such wild speculation illustrates that the suggestion that Powell is unfit is preposterous. From a notation about "smeared" lipstick, Dr. Scasta concluded that Powell may be having an inappropriate relationship, and further, that inappropriate relationship may be with a coworker. Again, such speculation defies logic.

Finally, City of Paterson suggested that any public safety employee who experiences an episode of major depressive disorder should be removed as unfit for duty, because the major depression is likely to recur. However, Dr. Gollin ably explained the difference between an episode of major depression, and recurrent major depression. Moreover, when Powell did experience an episode of major depression, she sought medical assistance, was treated, and recovered. Dr. Schlosser and Dr. Gollin agreed that Powell no longer suffers from depression, and indeed, does not suffer

from any diagnosable clinical disorder.³ City of Paterson's suggestion that any person diagnosed with an episode of major depression, at any time, is not fit to be a firefighter, clearly contravenes public policy. First, such a conclusion would discourage public safety employees who do experience an episode of major depression from seeking help. Here, Powell recognized her need for help, and rightly sought treatment. Second, that suggestion clearly contravenes the Vey test, which requires a connection between a personality trait (propensity to depression) and the actual duties of the position. See Vey, supra, 124 N.J. at 40-41. Finally, many physical and psychological disorders, once manifest and despite remission, are likely to recur. For example, such a sweeping conclusion could equally bar cancer patients in remission from employment in public safety positions. Accordingly, the mere speculation that Powell may, in the future, experience another episode of major depression, is not sufficient to establish that Powell is unfit for duty.

CONCLUSION

Therefore, I **CONCLUDE** that City of Paterson has not established, by a preponderance of the credible evidence, that Powell is unfit to perform the duties of a firefighter.

City of Paterson did not establish that Powell is psychologically unfit for the performance of her duties, because City of Paterson did not establish that certain alleged personality traits are an important element of her work behavior or that the personality test utilized is predictive of or significantly correlated with an element of work behavior.

ORDER

It is therefore **ORDERED** that the appellant, Charlayne Powell is psychologically fit for the performance of her duties.

³ Dr. Gollin testified that Powell may suffer from Obsessive Compulsive Personality Disorder, but no other psychologist diagnosed her with this condition. Dr. Gollin did not conclude that Powell was unfit due to this condition and offered no testimony on the impact of this condition on Powell's ability to perform the duties of her position.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 21, 2015

DATE



JEFFREY A. GERSON, ALJ

Date Received at Agency:

August 21, 2015

Date Mailed to Parties:

8/21/15

sej

APPENDIX

WITNESSES

For Appellant:

Charlayne Powell

Dr. Daniel Gollin

For Respondent:

Dr. Lewis Z. Schlosser

EXHIBITS IN EVIDENCE

For Petitioner:

P-1 State of New Jersey Job Description for Fire Fighter I

P-2 Letter from State of New Jersey Division of Pensions and Benefits to Charlayne T. Powell dated December 10, 2013

For Respondent:

None

Joint Exhibits:

J-1 Final Notice of Disciplinary Action dated March 6, 2014, with attached hearing officer decision

J-2 Preliminary Notice of Disciplinary Action dated May 28, 2014

J-3 Memorandum from Acting Deputy Chief Michael Fleming to Fire Chief Michael Postoring dated August 1, 2011

J-4 Correspondence from Michael R. Bizarro, Ph.D. from August 2, 2011. through May 7, 2012

J-5 Report from David Scasta, M.D. dated May 16, 2012

J-6 Report from David Scasta, M.D. dated June 27, 2012

J-7 MMPI-2 Correctional Interpretive Report dated June 27, 2012

J-8 MCMI-III Interpretive Report dated June 27, 2012

- J-9 Report from Daniel Gollin, M.D. dated January 11, 2013
- J-10 MMPI-2 Firefighters/Paramedics Interpretive Report dated January 7, 2013
- J-11 Report from David J. Gallina, M.D. dated March 16, 2013
- J-12 Curriculum Vitae for David J. Gallina, M.D.
- J-13 Reports from Richard A. Filippone, Ph.D. dated July 10, 2013
- J-14 Addendum Report from Richard A. Fillippone, Ph.D. dated September 29, 2013
- J-15 Report from Lewis Z. Schlosser, Ph.D. dated February 10, 2015 with notes
- J-16 MMPI-2 Extended Score Report dated January 30, 2015
- J-17 Curriculum Vitae for Lewis Z. Schlosser, Ph.D.
- J-18 Specialty Training and Education in Police Psychology for Lewis Z. Schlosser, Ph.D.
- J-19 Addendum from Daniel Gollin, M.D. dated June 5, 2015