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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.M., Sheriff's
Officer (S9999M), Bergen County

CSC Docket No. 2015-844

Medical Review Panel Appeal

ISSUED: SEP - 3 2015

(BS)

J.M. appeals his rejection as a Sheriff's Officer candidate by the Morris County Sheriff's Office and its request to remove his name from the eligible list for Sheriff's Officer (S9999M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on April 29, 2015, which rendered the attached report and recommendation on April 29, 2015. Exceptions were filed on behalf of the appointing authority.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Daniel Schievella (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and indicated that the appellant presented as tense, brusque, and impatient with the interview process. Dr. Schievella noted that, during the evaluation, the appellant made some comments which were inappropriate and odd. He also frequently shifted in his seat and picked at his skin. Dr. Schievella indicated that the appellant's history was remarkable in a number of respects, including witnessing violent incidents while growing up in Columbia, having a physically and mentally abusive father, and being involved in at least one domestic incident. The appellant also indicated that he had a "tough time" after returning from a deployment to Iraq and his employment has been "sporadic." Dr. Schievella's primary concern with this

appellant was his apparent irritability, brusqueness, and impatience and his history, which was indicative of multiple stressors and strongly suggested post-traumatic stress symptoms. Dr. Schievella concluded that the appellant was not psychologically suitable for employment as a Sheriff's Officer.

Dr. Peter Frohman (evaluator on behalf of the appellant) carried out a psychological evaluation of the appellant. Dr. Frohman characterized the appellant as revealing no evidence of a mental disorder. Dr. Frohman also indicated there were no signs or symptoms of post-traumatic stress disorder.

The Panel concluded that the negative recommendation found support in indications related to his inappropriate dress during the interview with Dr. Schievella, his presentation style, his exposure to violence in the home and in his birth country, as well as the possibility of post-traumatic stress disorder. The appellant answered the Panel's questions regarding his history, military service, and employment record. The appellant was forthcoming with his responses and was calm, articulate, and appropriate throughout the meeting. The Panel noted that, since the appellant was not represented by an attorney, he did not have access to the appointing authority's report and, therefore, was not aware of the reasons for his psychological disqualification by Dr. Schievella. The Panel questioned the appellant about comments that he had made during his initial evaluation that Dr. Schievella had concluded were inappropriate or odd. The Panel found the appellant's explanations of his remarks reasonable and the Panel did not consider the appellant's remarks about witnessing violence in Columbia or the doctoral degree hanging on Dr. Schievella's were "odd" or "inappropriate" in the context described. When queried on the way he was dressed for Dr. Schievella's evaluation, the appellant indicated it was a very hot day and that he regrets not having dressed more appropriately for such an important interview. The Panel noted that the psychological testing was unremarkable and there was no evidence in the testing, behavioral record, mental status, or the appellant's current presentation to suggest that there is a psychological issue that would disqualify the appellant. Accordingly, the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Sheriff's Officer, indicate that the applicant is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. The Panel recommended that the candidate be restored to the eligible list.

In its exceptions, the appointing authority, represented by Stephen E. Trimboli, Esq., Special County Counsel, asserts that the matter should be remanded for further proceedings because the appointing authority was never provided with a copy of Dr. Frohman's report. Since the appointing authority did not receive a copy of Dr. Frohman's report and recommendation, the appointing authority respectfully requests that the Commission not accept the Panel's report and recommendation in this matter. In the alternative, the appointing authority

requests that the matter be remanded and the parties be given the opportunity to review and respond to all the relevant documentation.

CONCLUSION

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. 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 prior to rendering its own conclusions and recommendations, which are based firmly on the totality of the record presented to it. Although the appointing authority argued that it did not receive a copy of Dr. Frohman's report, this procedural flaw is not sufficient to affect the outcome in this particular case. In this regard, the Commission finds that the Panel's report and recommendation discusses, almost exclusively, a number of issues raised by the appointing authority's evaluator, Dr. Schievella. The Commission does not find the exceptions raised by the appointing authority to be persuasive. The Commission further notes that the Panel's observations regarding the appellant's appearance before the Panel and its conclusions regarding the raw data and reports it reviewed in this matter, are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants. Based on the above, the Commission finds no compelling psychological reason to preclude the appellant from an opportunity of serving as a Sheriff's Officer.

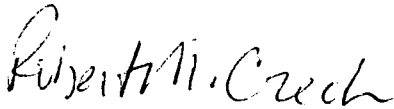
ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that J.M. is psychologically unfit to perform effectively the duties of a Sheriff's Officer and, therefore, the Commission orders that his 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 appellant be granted a retroactive date of appointment to 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 2ND DAY OF SEPTEMBER, 2015



Robert M. Czech
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Civil Service Commission

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and
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Attachment

c: J.M.
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