

B-25



**STATE OF NEW JERSEY**

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

In the Matter of C.P., Correction  
Officer Recruit, Department of  
Corrections (S9987M)

CSC Docket No. 2013-2826

**Medical Examiners Panel Appeal**

**ISSUED August 14, 2014 (ED)**

C.P. appeals his rejection as a Correction Officer Recruit candidate by the Department of Corrections and its request to remove his name from the eligible list for Correction Officer Recruit (S9987M) on the basis of medical unfitness to perform effectively the duties of the position due to an arteriovenous fistula.

This appeal was brought before the Medical Examiners Panel on January 16, 2014, which rendered the attached report and recommendation on January 16, 2014. The appellant was present at the meeting. Dr. F. Javier Villota was present as a representative for the Department of Corrections. No exceptions were filed by the parties.

*N.J.A.C.* 4A:4-6.5 provides for the Civil Service Commission (Commission) to utilize the expertise of a Medical Examiners Panel to make a report and recommendation on medical disqualification issues. The Panel is composed of medical professionals, all of whom are faculty and practitioners of the former New Jersey Medical School (University of Medicine and Dentistry of New Jersey) now Rutgers Biomedical and Health Sciences.

In this case, the Medical Examiners Panel's Chairman, Lawrence D. Budnick, MD, Director of Occupational Medicine Service and Associate Professor of Medicine, Rutgers Biomedical and Health Sciences noted that the Department of Corrections Medical Standards for Corrections Trainees and Parole Officer Recruits require that a corrections trainee not have an arteriovenous fistula. Mr. P. had a fistula at the time of his medical examination, as documented by Dr. Villota, and, therefore, was considered to not meet the minimal physical requirements for the position.

However, Mr. P. no longer has the fistula and Dr. Villota noted he could be reconsidered for the position.

The appellant has submitted documentation from Dr. Nasser Youssef of Lourdes Health Systems stating that the fistula was ligated on August 2, 2013 and the appellant does not have any restrictions regarding lifting, mobility or exercise.

Having considered the record and the Medical Examiners Panel's report and recommendation issued thereon and having made an independent evaluation of same, the Commission accepted and adopted the findings and conclusions as contained in the attached Medical Examiners Panel's report and recommendation.

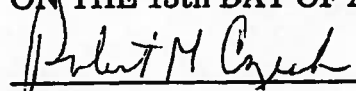
### **ORDER**

The Commission finds that the appointing authority has not met its burden of proof that C.P. is medically unfit to perform effectively the duties of a Correction Officer Recruit and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issues ascertained through an updated background check conducted after a conditional offer of employment, the appellant's appointment is otherwise mandated. A federal law, the Americans With Disabilities Act (ADA), 42 U.S.C.A. sec. 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 Examinations* (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 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 13th DAY OF AUGUST 2014**



**Robert M. Czech  
Chairperson  
Civil Service Commission**

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and  
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**Attachments**

**c: C.P.  
Jennifer Rodriguez, Dept. of Corrections  
Kenneth Connolly**