



STATE OF NEW JERSEY

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

In the Matter of C.V.D.,
Police Officer (S9999R), Waldwick
Borough

CSC Docket No. 2018-280

Medical Review Panel Appeal

ISSUED: October 19, 2018 (BS)

C.V.D., represented by Michael L. Prigoff, Esq., appeals his rejection as a Police Officer candidate by the Waldwick Borough Police Department and its request to remove his name from the eligible list for Police Officer (S9999R), Waldwick Borough on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on July 20, 2018, which rendered its report and recommendation on July 24, 2018. Exceptions were filed on behalf of the appointing authority and cross-exceptions on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Schlosser (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as evidencing significant problems, namely poor integrity and poor judgment. Dr. Schlosser cited discrepancies in reporting and his arrests as evidence that the appellant “could not be relied upon to be an accurate and reliable reporter of events, especially any that would place him in an unfavorable light. Dr. Schlosser concluded that the appellant is not psychologically suitable for the subject position and did not recommend him for appointment.

Dr. Sandra Marrow, evaluator on behalf of the appellant, conducted a psychological evaluation and characterized the appellant as feeling nervous and rushed during the Institute for Forensic Psychology’s interview and explained that

his not listing juvenile incidents was because he did not think the question referred to juvenile incidents. The appellant informed Dr. Morrow that he did mention the marijuana use and the incident involving breaking the padlock during his interview with Dr. Schlosser. Dr. Morrow found the Minnesota Multiphasic Personality Inventory 2 to be valid and lacked any indications of psychological difficulties. Dr. Morrow concluded that the appellant was psychologically fit to serve as a Police Officer.

The evaluators on behalf of the appellant and the appointing authority reached differing conclusions and recommendations. Dr. Schlosser cited problems with the appellant's legal history while Dr. Morrow did not see these issues rising to the level of a psychological disqualification. The Panel noted that all of the incidents in question occurred when the appellant was around the age of 21 or younger and that the Panel did not view the discrepancies in reporting his legal issues as an attempt to conceal information. Further, the record revealed no new negative interactions with law enforcement. The Panel noted that the appellant's poor performance in high school contrasted with his better performance in college, reflecting a change in attitude and consistent with his becoming more mature. Further, the Panel did not find the appellant's recording a "0" next to marijuana in the biographical summary and following up with admitting in the subsequent interview to having used marijuana five times as rising to the level of disqualification. It is important to note that the Panel did not see any ongoing issues with drug or alcohol use and noted that the appellant was subject to random drug screens as part of his enlistment in the National Guard. Accordingly, the Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is mentally fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. The Panel collectively concluded that there were no grounds to remove the appellant from the subject eligible list due to a lack of psychological fitness and that his name should be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by Little E. Rau, Esq., submits a letter from Dr. Matthew Guller, Managing Partner at the Institute for Forensic Psychology, the appointing authority's evaluating service, as rebuttal to the findings of the Medical Review Panel. Dr. Guller expressed concerns about the appellant's credibility by indicating that he scored very high, compared to other police applicants, on the "Desirable Responding Scale" of the "COPS-R -two standard deviations above the mean for such candidates." In his rebuttal, Dr. Guller further cites an Austin Police Report detailing the appellant's arrest for "Interference With a Service Animal," which he indicates was not available at the time of the initial evaluation or during the Panel meeting, and which is apparently "different" from the appellant's explanation of how the incident unfolded. Dr. Guller contends that this incident illustrates the appellant's attempts to be deceptive and his poor judgment. Dr. Guller argues that the Panel, Dr. Schlosser,

and Dr. Morrow were all provided deceptive descriptions by the appellant. Dr. Guller concludes that past behavior is the best predictor of future behavior and that the appellant is “likely to display similar poor judgment if appointed as a Police Officer.”

In his cross exceptions, the appellant argues that the appointing authority, via Dr. Guller’s rebuttal, raises issues already considered and rejected by the Medical Review Panel. The appellant contends that if there were any lingering questions about what happened in Austin, Texas in 2013, that information could have certainly been obtained prior to this point in the evaluation process. Moreover, there is no essential contradiction between what the Police Officer who was actually on the horse and what the appellant has said regarding the incident. The appellant points out that a different Police Officer, who did not witness the incident, made the actual arrest. With regard to the appellant’s marijuana use, Dr. Guller reiterates IFP’s argument that the disparities between the appellant’s answers on the Biographical Summary Form are confusing and his responses to IFP’s interviewer concerning incidents that happened eight to ten years previously, were found by the Panel not to rise to the level of psychological unsuitability. Accordingly, the appellant respectfully requests that his entire presentation, including his educational and employment experience, his performance in the armed forces and other facets of his history be considered and that the Commission accept and adopt the report and recommendation of the Panel.

CONCLUSION

The Civil Service Commission has reviewed the report and recommendation of the Medical Review 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. In the instant matter, the Commission finds the exceptions presented by the appointing authority not to be persuasive.

In this regard, the Commission notes that its Panel of qualified and licensed Psychologists and Psychiatrist have already reviewed the raw test data, reports and opinions of Drs. Schlosser and Morrow, and rendered its own expert opinion in this matter. The Commission defers to and agrees with the expert opinion of its Panel. Although Dr. Guller and IFP technically are not a party to this appeal, and it is not improper for an appointing authority to seek the advice and input of its evaluator when filing its exceptions, the Commission emphasizes that the responsibility to prepare and file exceptions rests solely with the appointing authority or its authorized legal representative.

Further, the Commission notes that if the appellant's behavior record was so egregious, the appointing authority had ample opportunity to request removal of his name from the list because of its background investigation prior to subjecting him to a psychological examination. Further, the Commission is mindful that any potential behavioral or performance issues regarding the appellant's employment can be addressed during the working test period.

Therefore, having considered the record and the Panel's Report and Recommendation issued thereon, and having made an independent evaluation of same, the Civil Service Commission accepted and adopts the findings and conclusions as contained in the attached Panel's Report and Recommendation.

ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that C.V.D. is psychologically unfit to perform effectively the duties of a Police 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 17TH DAY OF OCTOBER, 2018

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson, Civil Service Commission

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