



	:	<b>STATE OF NEW JERSEY</b>
	:	
	:	<b>FINAL ADMINISTRATIVE ACTION</b>
	:	<b>OF THE</b>
In the Matter of S.P., Correction	:	<b>CIVIL SERVICE COMMISSION</b>
Officer Recruit (S9988U),	:	
Department of Corrections	:	<b>CORRECTED</b>
	:	
	:	Withdrawal of Appeal
CSC Docket No. 2018-1302	:	
	:	
	:	

**ISSUED: FEBRUARY 8, 2019 (DASV)**

S.P., represented by Stuart J. Alterman, Esq., requests withdrawal of his appeal of his removal from the eligible list for Correction Officer Recruit<sup>1</sup> (S9999U), Department of Corrections, on the basis of psychological unfitness to perform effectively the duties of the position.

The relevant facts are as follows:

1. By letter dated October 19, 2017, the Department of Corrections removed the appellant’s name from the subject eligible list on the basis that he was found “psychological unsuitable for the position of Correction Officer Recruit.”
2. The appellant appealed the removal to the Civil Service Commission (Commission). The appeal was filed on November 6, 2017.
3. A letter, dated November 14, 2017, was sent to the parties acknowledging the appeal and advising that submissions are to be filed within 20 days of the date of the letter. Additionally, the appellant was advised that should he wish to submit a report and recommendation from a New Jersey

<sup>1</sup> Pursuant to *N.J.S.A. 11A:2-11.1*, effective May 1, 2018, the title of Correction Officer Recruit has been retitled to Correctional Police Officer.

licensed psychologist or psychiatrist, he may do so within 90 calendar days from the filing of the appeal to the Commission pursuant to *N.J.A.C.* 4A:4-6.5(e).

4. The appellant's psychological report recommending his psychological fitness for a Correction Officer Recruit position was faxed to the Commission on January 31, 2018.
5. The appeal was referred to the Medical Review Panel (Panel) for its review. By letter dated August 16, 2018, the parties were advised that the Panel would be considering the appellant's appeal at its meeting on September 28, 2018. The appellant was scheduled to meet with the Panel at 11:00 a.m. The letter also informed the parties that the Panel would not postpone consideration of the appeal unless the request met with the provisions of *N.J.A.C.* 4A:2-1.3. In the event that there was good and sufficient reason for the review to be cancelled or postponed, the parties were to notify the Commission no later than August 23, 2018. The letter further indicated that "[f]ailure to comply shall result in the assessment of costs to the involved party(ies)." It is noted that, on August 16, 2018, this letter was emailed and sent to the parties by regular mail.
6. No party requested cancellation or postponement of the appellant's meeting with the Panel by August 23, 2018.
7. The record in the matter was sent to the Panel on September 5, 2018 in preparation for its September 28, 2018 meeting.
8. On September 26, 2018, the appellant through his attorney advised that he was withdrawing his appeal as he "had decided to move his career in a different direction . . . [a]s such, there will [be] no need for the Medical Review Panel." The request was faxed to the Commission on September 26, 2018 at 3:26 p.m.
9. The Panel was compensated for its review of the case in the amount of \$500.

## CONCLUSION

*N.J.A.C.* 4A:4-6.5(g) provides in relevant part that the Commission shall either conduct a written record review of the appeal or submit psychological appeals

to the Panel for its report and recommendation. The Panel is composed of professionals in the psychological field.<sup>2</sup> The Panel reviews the psychological testing data and reports submitted by the parties in the appeal in advance of the meeting, they interview candidates at the meeting, deliberate on each case, and write reports with their recommendation to the Commission. The Commission relies on the Panel's reports to render its final determination as to whether the candidate was properly rejected for the position by the appointing authority. Given the volume of psychological disqualification appeals received by the Commission each year in conjunction with the fact that the Commission utilizes psychological medical professionals to review each case, the adjudication of psychological appeals is a lengthy process that can take up to two years. In this regard, the process consists of compiling the record which allows the appellant up to 90 days to submit an independent psychological evaluation; scheduling a meeting with the Panel which generally meets once a month to review a maximum of six cases; awaiting the Panel's report to be issued; permitting parties to submit exceptions and cross exceptions to the Panel's report and recommendation within 10 and five days of receipt,<sup>3</sup> respectively; and issuing the Commission's final determination. If the Commission determines that a candidate was improperly rejected for the position, the remedy provided is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes. Therefore, in order to ensure a fair process to all parties, it is imperative that the timeframes established throughout the process are strictly enforced.

In the instant matter, the appellant's appeal was filed on November 6, 2017 and he was scheduled to meet with the Panel on September 28, 2018. On August 16, 2018, more than one month prior to the Panel meeting, he was advised of the date of the meeting. He was also specifically informed that the parties were to notify the Commission no later than August 23, 2018 if cancellation was requested. However, the appellant did not inform the Commission until **two days** before the Panel meeting, less than 44 hours prior to his scheduled appointment. The Panel had already received the record in the matter and reviewed the case in preparation for the meeting. As such, the Commission compensated the Panel \$500 for its review of the appellant's case.

*N.J.A.C.* 4A:2-1.3 provides in part that:

(a) any party requesting an adjournment of a hearing or other review must establish good and sufficient reason for such request. Such reason may include, but is not limited to:

1. Unavoidable appearance by an attorney for a party in any state or federal court; or

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<sup>2</sup> The September 28, 2018 Panel meeting was composed of two psychologists.

<sup>3</sup> See *N.J.A.C.* 4A:4-6.5(g)3ii.

2. Illness of a party evidenced by an affidavit and a doctor's certificate.

(b) Where an adjournment is found not to be for good and sufficient reason, the [Commission] may impose a fine or penalty.

In addition, *N.J.A.C. 4A:4-6.5(g)*<sup>5</sup> states that the Commission “may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.”

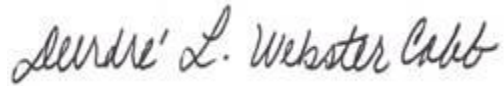
In the instant matter, the appellant had ample opportunity to advise the Commission of his withdrawal, beginning on August 16, 2017 when he filed his appeal. Even considering that the appellant may not have decided “to move his career in a different direction” until a later date, he still had over one month notice to advise the Commission prior to the Panel meeting on September 28, 2018. The appellant was specifically informed in the August 16, 2018 scheduling letter regarding timeframes that “[f]ailure to comply shall result in the assessment of costs to the involved party(ies).” Given the appellant’s failure to adhere to the timeframes established, he has caused unnecessary delay in the review process. In that regard, as set forth above, an appeal of psychological disqualification is a lengthy process. Had the appellant advised the Commission earlier, another case could have been presented to the Panel. Instead, the Panel reviewed the appellant’s record needlessly. Therefore, since the Commission does not find a basis to reject the appellant’s request for withdrawal, the appellant’s appeal is considered withdrawn with prejudice. However, he has not shown good and sufficient reason to have withdrawn his case less than two days prior to his scheduled meeting with the Panel. Therefore, the Commission orders that the appellant be assessed the cost of \$500 for the Panel’s review of his case.

### **ORDER**

Therefore, it is ordered that S.P.’s appeal be withdrawn with prejudice. It is further ordered that S.P. be assessed the cost of the psychological review of his case by the Panel in the amount of \$500 to be remitted to the Commission within 30 days of issuance of this decision.

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 6<sup>TH</sup> DAY OF FEBRUARY, 2019



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: S.P.  
Stuart J. Alterman, Esq.  
Veronica Tingle  
Kelly Glenn  
Beth Wood