



STATE OF NEW JERSEY

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

In the Matter of E.R., Sheriff's Officer
(S9999A), Cumberland County

CSC Docket No. 2022-565

Medical Review Panel Appeal

ISSUED: JUNE 20, 2022 (BS)

E.R., represented by Daniel J. Zirrieth, Esq., appeals his rejection as a Sheriff's Officer candidate by Cumberland County and its request to remove his name from the eligible list for Sheriff's Officer (S9999A) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel (Panel) on February 10, 2022, which rendered its Report and Recommendation on February 14, 2022. Exceptions were filed by the appointing authority, and cross exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Matthew Guller, evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and characterized the appellant as having no history of arrests, graduating high school with above average grades, denying any history of being diagnosed with a learning disability or taking any "remedial classes," and earning a Bachelor's degree in Criminal Justice in 2012. Dr. Guller described the appellant as presenting "somewhat awkward, childlike, and overly passive." Dr. Guller noted that the appellant denied having any history of mental health treatment or any current alcohol or drug abuse problems and denied any history of serious financial problems. Although the appellant had no current points on his driver's license, Dr. Guller indicated that the appellant had previously received two summonses, one in 2016 and one in 2019. With regard to employment history, the

appellant reported that he was never disciplined or reprimanded on a job although he had been the subject of verbal warnings while working for the Vineland Public Library. Additionally, the appellant had not been hired by the Sheriff's Office in 2017 after the verbal interview portion and had not been recommended for employment in 2017 and again in 2019 due to two prior job-related psychological examinations. As a result, Dr. Guller concluded that the appellant was not psychologically suitable for employment as a Sheriff's Officer.

The Panel's report also indicates that Dr. David Pilchman, evaluator on behalf of the appellant, conducted a psychological evaluation and characterized the appellant as having no history of alcohol or drug abuse and no history of "mental health complaints or treatment." Dr. Pilchman also found that the appellant had initially presented "in a soft spoken, respectful, and cooperative manner" and possessed communication skills that were "well-developed," "clear, coherent, and concise." Moreover, the appellant stated that a former supervisor did not like his performance, which may have been the reason for being deemed not appropriate for hire previously, but that his current supervisor had not expressed any significant concerns about the appellant's performance. Further, the appellant reported to Dr. Pilchman that he works with Police Officers and large groups of people at his job with the Cape May Ferry without any problems and has received positive yearly evaluations. The appellant worked for eight years previously as a Security Guard at the Vineland Public Library and admitted that his supervisor there had some issues with him regarding his performance. However, since 2017, the appellant has not had any work problems or complaints from his current supervisor. Further, Dr. Pilchman indicated that the appellant reported that he did have some difficulties completing applications during the hiring process because he "likes to take his time on tests and double check his responses." Dr. Pilchman concluded that the appellant was a "positive candidate" for employment as a Sheriff's Officer.

As set forth in the Panel's report, the evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. During his appearance before the Panel, the appellant responded to the concerns of the appointing authority, which included problematic communication skills and difficulty with reporting his personal history, both verbally and in writing. However, overall, the Panel found the appellant not to have significant problems with verbal communication and his communication skills during the Panel meeting was appropriate. It noted that both of the appellant's positions involved frequent interactions with the public assisting individuals and enforcing rules. The appellant provided reasonable explanations regarding the complaints of library patrons as he often had to enforce rules patrons did not like. Moreover, the appellant admitted to the Panel that it takes him longer to take tests because his approach is more "deliberate." The appellant often provides written reports at work and has never been advised that these reports were in any way below standard. In conclusion, the Panel found no significance of a behavioral pattern or any sufficient current evidence to

support the concerns of the appointing authority or which would prevent the appellant from performing the duties of a Sheriff's Officer. As a result, the Panel determined that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Sheriff's Officer, indicated that the appellant is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the appointing authority should not be upheld. Accordingly, the Panel recommended that the appellant be restored to the subject eligible list.

In its exceptions, the appointing authority argues that the appellant had been removed from an eligible list for Sheriff's Officer twice previously for failing the psychological examination and that the Panel failed to consider this information. In support of its exceptions, the appointing authority submits a psychological report from Dr. Chester E. Sigafos, dated February 10, 2017, in which the appellant was not recommended for appointment. The appointing authority contends that "[t]his is not the case of one doctor's opinion against another, but two doctors [sic] opinions against the doctor" hired by the appellant. The appointing authority requests that this information be reviewed.

In his cross exceptions, the appellant asserts that the three doctors on the Panel reviewed the submissions of both the appointing authority's evaluator and the appellant's evaluator prior to making its Report and Recommendation pursuant to *N.J.A.C. 4A:4-6.5(g)*. The Panel listed the documents it reviewed, including Dr. Guller's July 2, 2021 report, which made reference to the previous reports from Dr. Sigafos (2017) and Dr. Andrew Wolanin (2019), and were relied upon by Dr. Guller in making his assessment. It is noted that all three reports were provided by the appointing authority and forwarded to the Panel prior to its meeting. The appellant disputes the appointing authority's claim that the report of Dr. Sigafos was not considered. After review of all of the pertinent documents and his appearance before the Panel, the appellant emphasizes that the Panel determined that he should be restored to the subject eligible list. Accordingly, the appellant maintains that the appointing authority has failed to satisfy its burden of proof in this matter and requests that he be reinstated into the appointment process.

CONCLUSION

The Job Specification for the title, Sheriff's Officer, is the official job description for such county positions within the Civil Service system. According to the definition section, incumbents perform one or more functions in the following areas: maintaining order and security in a courtroom, serving court processes, criminal identification, ballistics and investigation, and the apprehension of violators of the law. A Sheriff's Officer may be assigned to perform other law enforcement or public safety related duties outside the parameters of a courtroom environment. Examples of work include the field and office work necessary to serve and execute warrants,

writs, court orders, summonses, subpoenas, and other documents directed to the Sheriff; making arrangements for the sequestering of juries; guarding and transporting prisoners; testifying in court; collecting monies to satisfy legal debts as ordered by the court; taking fingerprints; analyzing, indexing and classifying fingerprints; examining bullets and fragments; testing fired weapons in evidence and comparing test bullets with those on the crime scene; conducting criminal and other special investigations; locating and apprehending violators of the law; conducting classes related to departmental functions; operating a variety of communication equipment; providing security at public functions and county facilities; and conducting search and rescue operations.

The Civil Service Commission (Commission) has reviewed the Job Specification for this title and the duties and abilities encompassed therein and acknowledges the appointing authority's concerns regarding the appellant's communication skills and the difficulty he may have had reporting his personal history as noted in Dr. Guller's report. However, the Commission is not persuaded by the appointing authority's exceptions. Based on longstanding administrative practice, a psychological assessment for employment in law enforcement is only considered valid for one year. *See In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008). Accordingly, the 2017 and 2019 findings of Drs. Sigafos and Wolanin are older than one year and, therefore, not relevant in the instant matter. Regardless, the Commission notes that the submissions and findings of both Drs. Guller and Pilchman, which included the 2017 and 2019 reports, as well as the appellant's appearance before the Panel, were reviewed by the Panel prior to it making its Report and Recommendation. The Panel's observations regarding the appellant's appearance before the Panel are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants. The Commission finds the record, when viewed in its entirety, supports the findings of the Panel that the appellant is psychologically fit to serve as a Sheriff's Officer. Further, the Commission is mindful that any potential behavioral or performance issues regarding the appellant's employment can be addressed during his working test period as a Sheriff's Officer.

Therefore, having considered the record and the Panel's Report and Recommendation issued thereon, and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusion as contained in the Panel's Report and Recommendation and grants the appellant's appeal.

ORDER

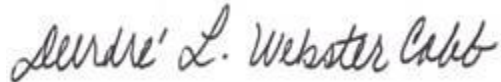
The Commission finds that the appointing authority has not met its burden of proof that E.R. is psychologically unfit to perform effectively the duties of a Sheriff's Officer and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issue 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 the appellant be granted a retroactive date of appointment to July 6, 2021, 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 15TH DAY OF JUNE 2022



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