



STATE OF NEW JERSEY

In the Matter of E.R.,  
Police Officer (M0119D),  
Pennsauken

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

CSC Docket No. 2023-1673

Medical Review Panel Appeal

**ISSUED: April 10, 2024 (BS)**

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E.R., represented by Mark W. Catanzaro, Esq., appeals his rejection as a Police Officer candidate by Pennsauken and its request to remove his name from the eligible list for Police Officer (M0119D) 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 August 18, 2023, which rendered a Report and Recommendation dated August 18, 2023. Exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations and the information obtained from the meeting. The negative indications related to the test results, the appellant's behavior during the interview, and behavioral history which suggests that the appellant is at high risk for job performance difficulties in the areas of impulse control, conscientiousness, and decision-making ability. These same factors further indicated that the appellant was at a moderate risk for job performance difficulties in the areas of social competence and integrity. In that regard, Dr. Jennifer Kelly, evaluator on behalf of the appointing authority, conducted a psychological evaluation using a number of psychological assessment tools. Based on the results of her assessment, Dr. Kelly characterized the appellant as presenting with evidence of substantial deficits in the required competencies and counterproductive behaviors incompatible with the safe and effective performance of the essential functions of a Police Officer. Dr. Kelly opined that, although the appellant may be capable of satisfactory performance in some occupations, he is not

regarded as suitable for employment as a Police Officer. Dr. Kelly did not recommend the appellant for employment as a Pennsauken Police Officer.

The Panel's report also set forth the findings of the appellant's evaluator, Dr. Catherine M. Barber, who conducted a psychological evaluation and concluded that, to a reasonable degree of psychological certainty, the appellant did not present with any mental health condition, disorder, or significant maladaptive personality trait which would preclude him from serving as a Police Officer. Dr. Barber opined that the traits/characteristics outlined in the job specification for Police Officer are evidenced in the appellant's real-life experiences while working as a security guard and soccer referee. Dr. Barber stated that, while she used the results of psychological testing routinely to assess various forms of psychopathology, it is Dr. Barber's position that personality traits are "much more accurately appreciated" by reviewing the appellant's actual responses to "real-life scenarios or ambiguous challenges." According to Dr. Barber, a "fundamental flaw" of employment screening is that it is over reliant on testing results and ignores a number of important critical features associated with success on the job in areas such as cognitive ability, communication skills, and perseverance. Dr. Barber found Dr. Kelly's conclusions about the appellant were not premised on any underlying data, and that Dr. Kelly omitted any critical analysis or exploration of the unfavorable information from the background investigation. In Dr. Barber's professional opinion, the appellant is psychologically stable and, in terms of his general personality traits and functioning, he is suitable for training and eventual employment as a Police Officer.

Moreover, during its meeting with the appellant, the Panel indicated that it reviewed incidents in the appellant's background investigation, including a termination from a healthcare facility and several "demeanor" complaints (which were sustained). The appellant's termination was the result of taking an excessively long break, which was documented on security video. The record also included "minor" infraction reprimands, his resignation from the Gloucester County Police Academy after failing the physical performance portion, and missing his first appointment with Dr. Kelly. The Panel also expressed concern about the appellant's alcohol use in which he reported varying levels of alcohol use and denied ever stating to Dr. Kelly that he had "guilty feelings" about drinking alcohol. Additionally, the Panel noted Dr. Kelly's concerns about the appellant's competencies and behavior that could be counterproductive to the role of Police Officer and that the appellant's presentation before the Panel was consistent with Dr. Kelly's findings. The Panel indicated that since leaving college, the appellant has held temporary/hourly positions, was terminated from one position, resigned from another position, and has been employed for 15 months, during which time he received two reprimands. The Panel opined that, should the appellant like to pursue a law enforcement career in the future, it would be important for him to demonstrate consistent, responsible employment with no difficulties. The Panel did not find the appellant to be psychologically suitable for employment as a Police Officer at this time.

In his exceptions, the appellant takes issue with Dr. Kelly's delay in providing the raw data to Dr. Barber and notes that Dr. Barber submitted a supplement report, dated May 16, 2023, which he claims was not considered by the Panel. The appellant asserts that Dr. Barber's supplemental report was "fact oriented" and "corroborates" her initial findings and accuses Dr. Kelly of being less than "punctual" in that she delayed handing over materials to Dr. Barber. Thus, he maintains that his appeal, at a minimum, should be referred back to the Panel to consider the supplemental report. Moreover, the appellant maintains that his disciplinary history involved "minor" incidents and takes issue with the Panel putting his characterization of such incidents in quotes as he presents an explanation of those incidents. Further, he asserts that it was not his fault that he missed his first appointment with Dr. Kelly, and as such, a negative inference should not be made in that regard.

With respect to his resignation from the Gloucester County Police Academy for failing the physical performance portion, the appellant offers that he had no choice because he was unable to get into better shape but that he did not "voluntarily leave." In that regard, the appellant also argues how he was found "psychologically fit" to be a Police Officer<sup>1</sup> previously to enter the academy yet cannot understand why he is now "psychologically unfit" for the subject evaluation. The appellant also disputes that the "demeanor" complaints were "sustained" and claims he has seen no evidence of these charges being sustained nor does he understand how this rendered him psychologically unfit to serve as a Police Officer. The appellant denies having any issues with alcohol, other than an underaged drinking incident while he was attending college, which he claims was "something a large majority of college freshmen do." The appellant also denies that alcohol has had any adverse impact on his life and that he had never said anything to the contrary to Dr. Kelly. The appellant notes that the Pennsauken Police Department was aware of his alcohol use, as well as his prior termination and employment history, when it extended him a conditional offer of employment. Additionally, the appellant asserts that he has served as a soccer referee for six years without incident, where he has "distinguished himself and is often assigned difficult games because of his ability to handle them." The appellant contends that the Panel did not identify a single identifiable psychological characteristic which would render him psychologically unfit to serve as a Police Officer in accordance with *In the Matter of Anastasia Vey*, 124 N.J. 534 (1991) and 135 N.J. 396 (1994). Rather, he contends that the Panel "essentially says that if [he] maintains full-time employment without any difficulties, and drinks less, he will be able to pursue a career in law enforcement in the future. That is not a psychological determination. [He] is either psychologically unfit and will not be fit to be a [P]olice [O]fficer due to a mental disease or disorder or he is not. The [Panel's]

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<sup>1</sup> Although the appellant refers to an evaluation in February 2022 for a Police Officer position, agency records indicate that he had been appointed as a Sheriff's Officer with the Gloucester County Sheriff's Office, effective February 14, 2022, and resigned in good standing March 29, 2022. He was not certified to Pennsauken for a Police Officer position until November 10, 2022.

conclusion is troubling.” Accordingly, the appellant submits that he should be restored to the appointment process.

## CONCLUSION

The Job Specification for Police Officer is the official job description for such municipal positions within the Civil Service system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives, the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

The Civil Service Commission (Commission) has reviewed the job specification for this title and the duties and abilities encompassed therein and finds that the psychological traits which were identified and supported by test procedures and the behavioral record relate adversely to the appellant’s ability to effectively perform the duties of the title. The Commission finds that the appellant’s exceptions do not persuasively dispute the findings and recommendations of the Panel. The Commission concurs with the Panel’s concerns which centered on issues with the appellant’s employment record, including a termination and disciplinary incidents, and his alcohol use. Regarding a point raised by the appellant in his exceptions, although the appellant had previously been appointed as a law enforcement officer, the position was for Sheriff’s Officer and not Police Officer. *See In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff’d on reconsideration* (MSB, decided April 9, 2008) (Psychological evaluation for employment as a Sheriff’s Officer is not a valid indicator for someone seeking employment as a Police Officer because the primary focus of these positions is not the same and each title has its own unique suitable characteristics). Nonetheless, the Commission has concerns surrounding the appellant’s resignation from the Gloucester County Police Academy. Although the appellant maintains that he did not “voluntarily leave” and contends that he had no

choice, he does not dispute that he failed the physical performance portion of the academy.

Moreover, the Commission emphasizes that the Panel's observations regarding the appellant's employment history, responses to the various assessment tools, and 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. Although the appellant argues that the Panel made no psychological diagnosis which would render him psychologically unsuitable for employment as a Police Officer as required by the standard articulated in *Vey, supra*, the Commission disagrees. The Panel specifically noted behavioral issues as demonstrated in the appellant's employment record, as well as questionable use of alcohol. Furthermore, contrary to the appellant's claim, the Panel was forwarded and did consider Dr. Barber's May 16, 2023 supplemental report. In the Report and Recommendation, among other documents reviewed, the May 17, 2023 letter with its enclosure from the appellant's attorney was listed as "Additional Documents Reviewed" by the Panel. The referenced enclosure was Dr. Barber's May 16, 2023 supplemental report. Thus, there is no basis to refer the matter again to the Panel.

Nonetheless, prior to rendering its decision, the Commission conducts an independent review of the exceptions and any other supplemental information submitted as well as the Report and Recommendation of the Panel prior to rendering its own conclusions, which are based firmly on the totality of the record presented to it. In this regard, the Commission finds that the appellant's behavioral history, as identified by the Panel, adversely relates to the effective performance of the essential functions of a Police Officer. The Commission also agrees with the Panel's assessment that if the appellant continues to establish a positive employment history, he may be deemed psychologically suitable at some point in the future should he choose to re-apply. *See e.g., In the Matter of M.R.* (CSC, decided December 18, 2019) (A candidate must be psychologically capable and available to undergo the training involved at that time. Thus, any positive behavioral evidence of an individual occurring after the time of the psychological determination cannot be considered. Accordingly, any prolonged or sustained level of maturity exhibited by a candidate after the psychological determination does not evidence that an appointing authority's removal of a candidate was in error).

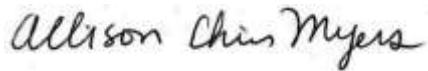
Therefore, having considered the record and the Panel's Report and Recommendation issued thereon and the exceptions filed by the appellant, and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's Report and Recommendation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

**ORDER**

The Commission finds that the appointing authority has met its burden of proof that E.R. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be removed from the subject eligible list.

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 10<sup>TH</sup> DAY OF APRIL, 2024



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