



STATE OF NEW JERSEY

In the Matter of A.H.,
 Police Officer (S9999A),
 City of Clifton

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

CSC Docket No. 2023-1463

Medical Review Panel Appeal

ISSUED: June 12, 2024 (BS)

A.H., represented by Valerie Palma Deluysi, Esq., appeals his rejection as a Police Officer candidate by the City of Clifton and its request to remove his name from the eligible list for Police Officer (S9999A)¹ on the basis of psychological unfitness to perform effectively the duties of the position.

The appeal was referred for independent evaluation by the Civil Service Commission (Commission) in a decision rendered December 6, 2023. The Commission indicated that the Medical Review Panel (Panel) was unable to render a determination regarding the appellant’s suitability for appointment. Rather, given the incidents and concerns that the Panel noted, it recommended that the appellant undergo an independent psychological evaluation to further assess his personality. Specifically, the Panel recommended that the appellant’s attention to detail be assessed given incidents with his employment history while employed by the Kinnelon Borough Police Department and whether attention issues, which could render him unfit for duty, played a role in any of these incidents. The Panel was of the opinion that these incidents could either be reflective of training issues that are correctible or that they could indicate that the appellant has attentional problems that might reach a level of rendering him not fit for the position. Further, as it may be helpful, the Panel suggested, and the Commission agreed, that the appellant should present his school records to the independent evaluator. The matter was then forwarded to the Commission’s independent evaluator, Dr. Robert Kanen, who issued

¹ It is noted that the eligible list promulgated on May 5, 2020 and expired on November 9, 2022.

a Psychological Evaluation and Report on December 27, 2023. Exceptions were filed on behalf of the appointing authority and cross exceptions were filed on behalf of the appellant.

The Psychological Evaluation and Report by Dr. Kanen discusses the evaluation procedure and reviews the previous psychological findings relative to the appellant. In addition to reviewing the reports and test data submitted by the previous evaluators, Dr. Kanen administered the following: Clinical Interview/Mental Status Examination; Shipley Institute of Living Scale; Public Safety Application Form; Behavioral History Questionnaire, Inwald Personality Inventory-II, and three subtests of the Wechsler Adult Intelligence Scale, 4th Edition (Picture Completion, Digit Span, and Arithmetic). Upon his interview of the appellant and based on the test results, Dr. Kanen indicated that the appellant appeared to be honest and candid when responding and he did not present as someone trying to present a socially positive image. Dr. Kanen found that the appellant was functioning within “normal ranges” and had no psychopathology or personality problems that would interfere with his work performance. Dr. Kanen further found that the appellant, who is college educated, possessed the necessary cognitive ability to perform the duties of a Police Officer and he is responsible and stable. Of note, Dr. Kanen stated that the personality testing revealed that the appellant “falls into the category likely to recommend for employment in a public safety/security position based on the estimated psychologist recommendation” and “likely to meet expectations” in terms of his ability to control conflict, to relate and work with the public, and “in the overall rating by a field training officer.” As the Panel had concerns with the appellant’s attention to detail, Dr. Kanen indicated that the appellant was administered the Wechsler Adult Intelligence Scale which produced “average” and “low average to average” ranges in the three subtests. Dr. Kanen opined that whatever work performance problems that the appellant manifested while employed by the Kinnelon Borough Police Department were correctable through training. Therefore, Dr. Kanen concluded that the appellant was psychologically suitable for employment as a Police Officer.

In its exceptions, the appointing authority, represented by Nicole DeMuro, Esq.,² argues that Dr. Kanen failed to address the issue of the appellant’s attention to detail and, therefore, his report lacks credibility. It maintains that its evaluator’s report provides “substantial evidence” of the appellant’s inattentiveness through his employment, driving history, and finances. In contrast, the appointing authority asserts that the tests conducted by Dr. Kanen did not reveal a “propensity for detail.” Instead, the appellant’s scores were in the low average range. Further, it maintains that Dr. Kanen failed to indicate the length of his interview or to submit any of the raw test data which supported his conclusions. The appointing authority argues that the Commission cannot rely on any of Dr. Kanen’s interview or testing without

² Joseph A. Natale, Esq., filed the exceptions on behalf of the appointing authority. Nicole DeMuro, Esq., of the same law firm, is now the attorney of record for the City of Clifton.

considering the length of time or reviewing the raw test data itself. The appointing authority argues that Dr. Kanen's report to be "both substantively and procedurally deficient" and, as such, the Commission should give it no weight. Additionally, the appointing authority objects to Dr. Kanen's reliance on two previous positive psychological evaluations, which are no longer valid per the Commission's longstanding administrative practice that psychological evaluations are only valid for a period of one year from the time they are administered.³ The appointing authority contends that there is ample evidence in the record that the appellant has been disciplined multiple times from various employers for incidents which demonstrate the appellant's lack of attention to detail, as well as having disciplinary issues in school relating to attendance. Further, the appointing authority asserts that the appellant's failure to "completely and accurately" disclose information during its evaluator's evaluation is further evidence that the appellant lacks the "diligence, thoroughness, and attention to detail required of a Police Officer." Finally, the appointing authority notes that the appellant failed to provide his academic record to Dr. Kanen as ordered by the Commission. Accordingly, the appointing authority requests that the Commission not adopt the Psychological Evaluation and Report of Dr. Kanen and find the appellant psychologically unsuitable for employment as a Police Officer.

In his cross exceptions, the appellant argues that the appointing authority failed to acknowledge that he had submitted two psychological evaluations in support of his appeal, both of which disagreed with its evaluator's findings and found him to be psychologically suitable to serve as a Police Officer. Further, the Panel reviewed all three of the reports prior to making its recommendation that he submit to an independent psychological evaluation, which the appellant did. Dr. Kanen concluded that he was psychologically suitable to serve as a Police Officer. The appellant also contends that the appointing authority fails to acknowledge the positive recommendations from law enforcement professionals submitted on his behalf. With regard to the appellant's academic records, the appellant indicates that if Dr. Kanen found his academic records to be necessary in order to formulate an opinion, Dr. Kanen would have requested them. The appellant notes that he graduated high school in 2011 and college in 2017. Dr. Kanen administered a number of tests and found that the appellant's attention to detail was "average," and that his scores for attention and concentration were within the "average" range. As for the appointing authority's contention that Dr. Kanen relied on prior evaluations, the appellant maintains that nowhere in Dr. Kanen's report does he say that he relied on those previous evaluations, but rather, he merely mentioned that the reports "existed." Lastly, the appellant contends that the appointing authority does not present "true legal arguments." Rather, the appointing authority presents a "list of complaints" which "falsely allege" that Dr. Kanen failed to provide an assessment of his

³ The appointing authority notes that Dr. Kanen indicated that the prior reports were from 2019 and 2020. However, it states that the evaluations occurred in 2018 and 2021.

attentiveness. Accordingly, the appellant respectfully requests that the Commission adopt the recommendation of Dr. Kanen and restore him 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 and 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.

In the present matter, the Commission referred the appellant for an independent psychological evaluation. Dr. Kanen performed additional tests necessary to determine the appellant's psychological fitness for a Police Officer position and found that the appellant is functioning within "normal ranges." Contrary to the appointing authority's exceptions, Dr. Kanen specifically conducted the necessary tests which addressed the concerns of the Panel, including tests on attentiveness, and based on those tests, the appellant fell in the "average" and "low average to average" ranges and in the categories of "likely to recommend for employment" and "likely to meet expectations," and he did not possess any "psychopathology or personality problems" that would interfere with the daily functioning or performance of the duties of a Police Officer. Accordingly, Dr. Kanen found the appellant to be psychologically suited for a Police Officer position.

Thus, upon its review, the Commission is not persuaded by the appointing authority's exceptions. In this regard, the Commission also notes that, although the City of Clifton was aware of the appellant's employment history and his record at the Kinnelon Borough Police Department, the appointing authority did not find his background so egregious that it withheld making him a conditional offer of appointment. The Commission agrees with Dr. Kanen's assessment that whatever

work performance problems the appellant exhibited as a Kinnelon Borough Police Officer were and are correctible through training. Further, although Dr. Kanen may have referenced the two previous reports, there is no indication that he relied on either of these reports as suggested by the appointing authority. Instead, Dr. Kanen administered his own tests and reviewed relevant information. Thus, the Commission defers to the opinion of its expert in this matter.⁴ Moreover, while the Panel suggested, and the Commission agreed, that the appellant should present his school records to the independent evaluator to aid in his assessment of the appellant, the appellant's failure to do so does not invalidate Dr. Kanen's evaluation. Further, the Commission is mindful that the appellant's suitability will be further assessed during his working test period by the appointing authority and will ultimately demonstrate whether he has the actual ability to successfully perform the duties of a Police Officer.

Therefore, having considered the record and the Psychological Evaluation and Report issued thereon, and having made an independent evaluation of the same, including a review of the Job Specification for the position sought, the Commission accepts and adopts the findings and conclusions as contained in the Psychological Evaluation and Report and orders that the appellant's appeal be granted.

ORDER

The Commission finds that the appointing authority has not met its burden of proof that A.H. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that the eligible list for Police Officer (S9999A), City of Clifton, be revived and the appellant's name be restored. 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.

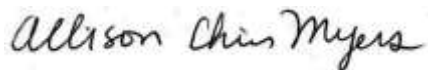
Since the appointing authority has not supported its burden of proof, upon the successful completion of his working test period, the Commission orders that the appellant be granted a retroactive date of appointment to January 16, 2023, the date he would have been appointed if his name had not been removed from the subject

⁴ The appointing authority's argument regarding the submission of raw test data or the indication of the length of Dr. Kanen's interview of the appellant is misplaced. The Commission referred the appellant for an independent psychological evaluation. Dr. Kanen, who is the expert in this matter, performed this evaluation and properly provided a report of the appellant's psychological suitability for appointment.

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 12TH DAY OF JUNE, 2024



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