



STATE OF NEW JERSEY

In the Matter of T.T.,
Fire Fighter (M1873W)

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

CSC Docket Nos. 2023-2197 and
2024-1626

Medical Review Panel Appeal
Request for Reconsideration

ISSUED: July 3, 2024 (BS)

T.T. appeals his rejection as a Fire Fighter candidate by Teaneck and its request to remove his name from the eligible list for Fire Fighter (M1873W) on the basis of psychological unfitness to perform effectively the duties of the position. Additionally, the appointing authority, represented by Mark A. Tabakin, Esq., requests reconsideration of the Civil Service Commission’s (Commission) assessment of costs in *In the Matter of T.T.* (CSC, decided January 17, 2024).

The appeal was referred for independent evaluation by the Commission in a decision rendered January 17, 2024. The Commission indicated that the Medical Review Panel (Panel) was unable to determine the appellant’s suitability for appointment based on the information available to it at the time. Rather, given the incidents and concerns that the Panel noted in the appellant’s behavioral history, it recommended that the appellant undergo an independent psychological evaluation to further assess his personality. Specifically, noting that the appellant has a history of attention deficit hyperactivity disorder (ADHD), the Panel found that it was necessary to recommend an independent psychological evaluation to assess whether the appellant had any underlying issues that may have contributed to misreported dates and inaccuracies in the appellant’s self-report. The Panel opined that this could be reflective of ongoing carelessness by the appellant, which could be reflective of attentional problems. The Panel also indicated that the appellant’s motor vehicle history could be reflective of ongoing evidence of poor decision-making abilities, which needed further exploration. The Commission agreed with the Panel, and the matter was then forwarded to the Commission’s independent evaluator, Dr. Robert Kanen,

for a psychological evaluation. Thereafter, Dr. Kanen evaluated the appellant and issued his Confidential Psychological Evaluation on February 12, 2024. No exceptions or cross exceptions were filed by the parties.

The Confidential Psychological Evaluation 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; Shipley Institute of Living Scale; Public Safety Application Form; Behavioral History Questionnaire; and the Inwald Personality Inventory-II. Upon his interview of the appellant and based on the test results, 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 indicated that the appellant had a high average cognitive ability. Although the appellant had been diagnosed with ADHD and prescribed Adderall in his youth, he improved and discontinued the medication. Dr. Kanen noted that the appellant went to college and earned a degree in business marketing, which suggested that the appellant had the necessary self-discipline, persistence, and organizational skills needed to complete his college-level education. Further, the appellant admitted to motor vehicle incidents involving accidents, two of which were his fault. The appellant was also arrested for shoplifting as a juvenile and had two suspensions in high school, one for fighting and one for possession of stolen property. However, Dr. Kanen opined that the appellant had matured and had no arrests as an adult or indications of antisocial behavior. In addition to being currently employed as a Court Services Officer,¹ Dr. Kanen noted that the appellant works two part-time jobs as an Emergency Medical Technician, indicating a motivation toward community service. Of note, Dr. Kanen stated that the personality testing revealed that the appellant falls into the “category of likely to be recommended for employment in a public safety/security position based on the estimated psychologist recommendation” and “likely to meet expectations on all four Field Training Officer Predictions.” Therefore, Dr. Kanen concluded that the appellant was psychologically suited for employment as a Fire Fighter.

Regarding the appointing authority’s request for reconsideration, in its January 17, 2024 decision in this matter, the Commission ordered that the cost incurred for the independent psychological evaluation be assessed to the appointing authority in the amount of \$530. The appointing authority maintains that the Commission made “a clear material error” in that regard. Specifically, the appointing authority highlights that, pursuant to *N.J.A.C. 4A:2-1.1(c)*, the appellant must provide any additional information that is requested, and per *N.J.A.C. 4A:4-6.5(c)4*, the appellant has the opportunity to submit a report from a psychologist or psychiatrist. Thus, it argues that “the responsibility to facilitate and pay the cost of

¹ Agency records indicate that the appellant was appointed as a Court Services Officer Trainee with the Judiciary, Vicinage 11-Passaic County, effective May 8, 2023, and he is currently serving as a Court Services Officer 1.

this third psychological evaluation rests solely” on the appellant. Moreover, the appointing authority contends that there is no evidence that the appointing authority delayed the review process or violated any rules regarding the evaluation process and, to the extent there is an “inadequacy” in the psychological evaluations, this “inadequacy” cannot be ascribed to the appointing authority. The appointing authority submits that it met its burden of proof that the appellant is psychologically unfit to serve as a Fire Fighter, and as such, the “adequacy of professional reports and subsequent appeals are the [appellant’s] burden to pursue.” The appointing authority maintains its position that the appellant is psychologically unfit to serve as a Fire Fighter and requests that the Commission vacate that portion of its decision assessing the appointing authority the \$530 cost of Dr. Kanen’s independent psychological evaluation.

CONCLUSION

N.J.A.C. 4A:2-1.1(c) states that the appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal. Moreover, *N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

With regard to psychological disqualification, *N.J.A.C.* 4A:4-6.5(c)4 indicates, in relevant part, that if the eligible does file an appeal, an opportunity will be provided to submit a report from a psychologist or psychiatrist of his or her own choosing. Further, *N.J.A.C.* 4A:4-6.5(g) provides, in pertinent parts, that (4) in appropriate cases, the Commission may refer an appellant for an independent professional evaluation and (5) 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. Moreover, *N.J.A.C.* 4A:4-6.3(b) states that the appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

Additionally, the Job Specification for the title of Fire Fighter is the official job description for such positions within the Civil Service system. According to the specification, Fire Fighters are entrusted with the safety and maintenance of expensive equipment and vehicles and are responsible for the lives of the public and other officers with whom they work. Some of the skills and abilities required to perform the job include the ability to work closely with people, including functioning as a team member, to exercise tact or diplomacy and display compassion,

understanding and patience, the ability to understand and carry out instructions, and the ability to think clearly and apply knowledge under stressful conditions and to handle more than one task at a time. A Fire Fighter must also be able to follow procedures and perform routine and repetitive tasks and must use sound judgment and logical thinking when responding to many emergency situations. Examples include conducting step-by-step searches of buildings, placing gear in appropriate locations to expedite response time, performing preparatory operations to ensure delivery of water at a fire, adequately maintaining equipment and administering appropriate treatment to victims at the scene of a fire, *e.g.*, preventing further injury, reducing shock, and restoring breathing. The ability to relay and interpret information clearly and accurately is of utmost importance to Fire Fighters as they are required to maintain radio communications with team members during rescue and firefighting operations.

In the present matter, the Commission referred the appellant for an independent psychological evaluation. Dr. Kanen performed additional tests to determine the appellant's psychological fitness for a Fire Fighter position and found that the appellant is functioning within "normal ranges." Dr. Kanen also conducted the necessary tests which addressed the concerns of the Panel, and based on those tests, the appellant fell in the category 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 performance of the duties of a Fire Fighter. Accordingly, Dr. Kanen found the appellant to be psychologically suited for a Fire Fighter position.

Therefore, having considered the record and the independent Confidential Psychological Evaluation 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 Confidential Psychological Evaluation and orders that the appellant's appeal be granted. 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 Fire Fighter.

With respect to the appointing authority's request for reconsideration of the cost of the independent psychological evaluation, a review of the record reveals that reconsideration is not justified. In that regard, the Commission has the discretion to assess the \$530 cost incurred for the independent evaluation to the appointing authority. *See In the Matter of J.D.*, Docket No. A-6849-03T2 (App. Div. December 6, 2005). As set forth in *N.J.A.C. 4A:4-6.5(g)(5)*, the Commission may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation. In this instance, the Commission deferred to the expert opinion of its Panel, which determined that, after a review of all the

relevant information submitted, in conjunction with the appellant's appearance before it, it did not have sufficient information to formulate an opinion. The Panel recommended that an independent psychological evaluation be administered. It is emphasized that, pursuant to *N.J.A.C.* 4A:4-6.3(b), the appointing authority has the burden of proof in this matter, and although it argues that its pre-appointment psychological evaluation had satisfied its burden, the Commission disagreed and determined that further evaluation was necessary. In other words, the appointing authority's pre-appointment evaluation was not adequate. Indeed, Dr. Kanen, as well as the appellant's independent evaluator, found the appellant to be psychologically suitable for a Fire Fighter position. Therefore, the appointing authority's argument that *N.J.A.C.* 4A:2-1.1(c) and *N.J.A.C.* 4A:4-6.5(c)4 provide justification for the appellant to bear the cost of Dr. Kanen's evaluation is unpersuasive. Accordingly, the Commission finds no grounds on which to grant reconsideration of its prior order, which assessed the appointing authority with the cost of the independent psychological evaluation.

ORDER

The Commission finds that the appointing authority has not met its burden of proof that T.T. is psychologically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that the appellant's 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 January 3, 2023, 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, except the relief enumerated above.

Additionally, it is ordered that the appointing authority's request for reconsideration be denied and the assessment of the cost of the independent psychological evaluation in the amount of \$530 be paid by the appointing authority within 30 days of the issuance of this decision.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF JULY, 2024



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