



STATE OF NEW JERSEY

In the Matter of A.C.,
Police Officer (M0152D),
Teaneck

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

CSC Docket No. 2023-1740

Medical Review Panel Appeal

ISSUED: May 22, 2024 (BS)

A.C., represented by Stephen B. Hunter, Esq., appeals his rejection as a Police Officer candidate by Teaneck and its request to remove his name from the eligible list for Police Officer (M0152D)¹ 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 October 20, 2023, which rendered a Report and Recommendation on October 20, 2023. Exceptions were filed on behalf of the appointing authority, and cross 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 appellant’s emotion regulation and stress tolerance. In that regard, Dr. Jennifer Buhler, evaluator on behalf of the appointing authority, conducted a psychological evaluation and indicated that the appellant was “superficially cooperative” when comparing discrepancies from a previous psychological evaluation with Dr. Buhler’s interview and the appellant’s responses on his Biographical Summary form. Dr. Buhler pointed out that the most significant discrepancies concerned the appellant’s mental health systems and his treatment history, which the appellant attempted to minimize during Dr. Buhler’s interview. The appellant was less than forthcoming about his depressive symptoms and history of suicidal ideation. In an attempt to get

¹ It is noted that the eligible list promulgated on November 10, 2022 and expired on November 9, 2023.

him to be more forthcoming during the current evaluation, Dr. Buhler referenced a previous evaluation conducted on the appellant in 2020 for a position as a Correctional Police Officer with the Department of Corrections. Dr. Buhler noted longstanding and significant concerns related to the appellant's emotional regulation and ability to tolerate stress. The appellant revealed that he began experiencing symptoms of depression in middle school and consistently identified significant losses in his life, including the deaths of his grandfather, family dog, and mother, all of which resulted in sadness. The appellant informed Dr. Buhler that this was a "very dark time for him" and that he had thoughts such as he "didn't want to be here anymore." The appellant reported that he had only recently begun addressing his grief by attending two, short-time counseling sessions which were approximately three months each. In addition to admitting to having chronic depressive symptom, the appellant also endorsed longstanding sleep and energy difficulties as well as difficulties related to being able to sustain attention and concentration. Dr. Buhler opined that these sleep issues would be exacerbated by shift work. During the previous 2020 evaluation, Dr. Buhler noted that the appellant endorsed experiencing additional significant symptoms of psychopathology including panic attacks and/or night terrors and out-of-body experiences on multiple occasions. Dr. Buhler indicated that the psychological test data supported these conclusions. As a result, Dr. Buhler did not recommend the appellant for employment as a Teaneck Police Officer.

The Panel's report also sets forth the findings of the appellant's evaluator, Dr. David Gallina, who conducted a psychiatric evaluation which included a clinical interview, the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), Beck's Anxiety Inventory, Beck's Depression Inventory, and a review of the relevant records. Dr. Gallina concluded that, in his medical opinion with a reasonable degree of medical certainty, the appellant was psychologically and psychiatrically suitable to serve as a Teaneck Police Officer.

Upon its assessment, the Panel found the appellant's appearance before it to be consistent with the report of Dr. Gallina. In this regard, the Panel noted that the appellant had been employed for over a year by the Department of Homeland Security as a Transportation Security Administration (TSA) Agent and denied any difficulties, reprimands, or complaints against him in this capacity. His quarterly performance evaluations had been positive. Further, the appellant has no criminal history, license suspensions, DUIs, or credit issues. The appellant reported one moving violation for speeding while he was visiting the State of Virginia, but that this issue was resolved and he has had no other moving violations. With regard to the concerns of the appointing authority's evaluator about the appellant's depressive symptoms and suicidal ideation, the appellant reported that, after failing his previous evaluation, he decided to seek professional mental health treatment. The Panel indicated that the appellant appropriately sought and completed mental health treatment to address prolonged bereavement after the loss of his mother. The appellant denied taking any medication, and there was no indication that he abused any substances

during his period of bereavement or treatment. The Panel concluded that, when taking into consideration Dr. Buhler's psychological evaluation, Dr. Gallina's psychiatric evaluation, the appellant's presentation before the Panel, the test results and behavioral record, the appellant was psychologically suitable for employment as a Teaneck Police Officer

In its exceptions, the appointing authority, represented by Mark A. Tabakin, Esq., argues that the Panel had violated its "statutory mandate" in that the Panel's role is limited to reviewing the competing psychological reports, the appellant's presence is not required, and the appeal is to be reviewed based upon the written record as presented. The appointing authority further contends that the Panel erred by failing to consider the appellant's previous 2020 evaluation in which he was found psychologically unsuitable for employment as a Correctional Police Officer due to "mistakenly or intentionally" reporting his history of depression and related symptomatology. Further, the appointing authority states that the findings of the 2020 report were very similar to Dr. Buhler's 2023 analysis of the appellant's suitability. The appointing authority acknowledges that the appellant has been successfully serving as a TSA Agent but emphasizes that this was not equivalent to being a sworn Police Officer who is licensed to carry a weapon. Citing *In the Matter of Vey*, 124 N.J. 534, 540 (1991), the appointing authority asserts that psychological testing "to predict or evaluate employee job performance is a recognized part of the American workplace" and that the reports and testimony before the Panel contained enough credible evidence to sustain the appellant's removal. In conclusion, the appointing authority maintains that the Panel failed to consider several factors regarding the appellant's untreated psychological disorders, poor stress management, and issues with social competence and that, accordingly, the Civil Service Commission (Commission) should uphold his removal from the subject eligible list.

In his cross exceptions, the appellant asserts that the Panel appropriately considered the relevant psychological reports as well as his appearance before it, and rightfully engaged in relevant fact finding. The appellant notes that N.J.A.C. 4A:4-6.5(g) provides that the Panel is permitted to review other relevant material. The appellant indicates that he also submitted 11 "strongly supportive letters of recommendation" from his TSA supervisors as well as from Teaneck coaches and community leaders who were familiar with his accomplishments. Further, he indicates that the Panel properly considered his responses to questions posed to him by the Panel before recommending that he be reinstated to the subject eligible list. Accordingly, the appellant submits that the Commission should adopt the Report and Recommendation of the Panel 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, 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 this matter, the Commission has reviewed the Job Specification for this title and the Report and Recommendation of the Panel. The Commission is not persuaded by the exceptions filed by the appointing authority. It is emphasized that the Commission conducts an independent review of the record, including 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 the appointing authority's inclusion of a previous psychological evaluation in its arguments is misplaced. 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,² decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008). Accordingly, the previous 2020 evaluation for Correctional Police Officer is not relevant in the instant matter. Even if it were within one year of the current psychological evaluation, the Commission is mindful that this evaluation was administered to determine the appellant's psychological suitability for a Correctional Police Officer position rather than Police Officer, which is a separate and distinct title.

Moreover, contrary to the appointing authority's exceptions, the Panel's role is not limited to reviewing only the competing psychological reports. The Panel consists of qualified and licensed Psychologists and a Psychiatrist, who reviewed raw test data

² The Commission was previously known as the Merit System Board (MSB).

and the reports and opinions of Drs. Buhler and Gallina and rendered its own expert opinion in this matter. Further, a meeting may be conducted, which serves to elicit or seek clarification of areas of concern addressed in each of the reports and other information submitted. *N.J.A.C.* 4A:4-6.5(g) provides, in pertinent part, that the Panel may request additional psychological or medical reports, examinations, or other materials that it deems necessary in order to render an accurate report and recommendation of an appellant's psychological suitability to the Commission. Thus, the Panel did not go beyond its "statutory mandate" to review the appeal in this manner.³ It is emphasized that the Panel's observations regarding the appellant's behavioral history, responses to the various assessment tools, and appearance before it are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants. The Commission defers to and agrees with the expert opinion of the Panel. In further addressing the appointing authority's concerns, the Commission notes that any potential behavioral or performance issues regarding the appellant's employment can be addressed during the working test period.

Therefore, having considered the record and the Panel's Report and Recommendation issued thereon and having made an independent evaluation of same, the Commission accepts and adopts the findings and conclusions 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 A.C. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that the eligible list for Police Officer (M0152D), Teaneck, 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*:

³ *N.J.A.C.* 4A:4-6.5(g)1 indicates, in part, that when an appeal is submitted to the Panel, the appellant or the appointing authority may request the opportunity to appear before the Panel. Such request must be made within 10 days from receipt of notice that the appeal has been submitted to the Panel. *N.J.A.C.* 4A:4-6.5(g)2 further states that if no appearance is requested, the appeal will be reviewed by the Panel upon the written record. However, the foregoing provisions do not preclude the Commission or the Panel from conducting a meeting and requiring that the appellant attend. Pursuant to *N.J.A.C.* 4A:4-6.5(g), there is no dispute that the Commission shall either conduct a written record review of the appeal or submit psychological appeals to the Panel and the Panel may request additional psychological or medical reports, examinations, or other materials.

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 17, 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 or counsel fees, except for 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 22ND DAY OF MAY, 2024

Allison Chris Myers

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