

CS 2
B-84



In the Matter of Matthew Rivera,
Fire Fighter (M2542M), Jersey City

CSC Docket No. 2015-3289

STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

List Removal Appeal

ISSUED DEC 17 2015 (BS)

Matthew Rivera, represented by Michael J. Prigoff, Esq., appeals his rejection as a Fire Fighter candidate by Jersey City and its request to remove his name from the eligible list for Fire Fighter (M2542M) on the basis of a "medical negative" drug test.

By way of background, the appellant, a non-veteran, appeared on the Fire Fighter (M2542M), Jersey City, eligible list, and his name was certified to the appointing authority on September 30, 2014. In disposing of the certification, the appointing authority requested the removal of his name due to a "medical negative" drug test. In support of its request for removal, the appointing authority submitted a laboratory report from Omega Labs in Mogadore, Ohio, dated October 20, 2014, indicating that a sample of the appellant's hair was collected on October 14, 2014 and proved "medical negative" for Oxycodone.

In support of his appeal, the appellant states that he provided documentation that he was prescribed oxycodone for pain following surgeries to repair an ACL and an arthroscopy. The appellant indicated that he continued to take the medication as directed while previously employed as a Landscaper, working on his feet 10 to 15 hours per day but that he is now employed by Wells Fargo and no longer needs to take the medication. Further, the appellant asserts that he would not take the medication if employed as a Fire Fighter and is aware that he will be subjected to periodic drug testing to verify this commitment. The appellant argues that having used a validly prescribed medication in the past for a transient condition should not be a valid bar to his appointment at this time.

The appointing authority argues that oxycodone is a sedative and that the medical condition which required the use of oxycodone would require restrictions on the appellant's ability to perform the duties of the subject position.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)3, states that an eligible who is physically unfit to effectively perform the duties of the position may be removed from the eligible list. *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, also states that an eligible may be removed from an eligible list for other sufficient reasons as determined by the Civil Service Commission.

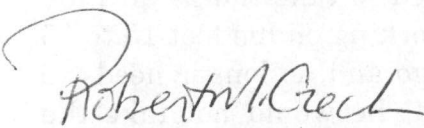
Appellant does not dispute that he tested "medical negative" for oxycodone but asserts that it was a direct result of a prescription medication that he took on his physician's instructions following knee surgery. The appellant fully disclosed all pertinent information pertaining to his oxycodone use prior to submitting to the drug screening. In this case, the Commission finds the appellant's arguments persuasive to dispute the appointing authority's arguments concerning the "medical negative" drug test. The appointing authority has failed to present any evidence to support its claims that the appellant's medical condition would require continued oxycodone use or would restrict the appellant's ability to perform the duties of the position. If the appointing authority's concern is that the appellant is not medically fit to perform the duties of a Fire Fighter, it may evaluate the appellant's current medical fitness in the context of a medical examination after the conditional offer of employment is made.

ORDER

Therefore, it is ordered that this appeal be granted and the name of Matthew Rivera be restored to the eligible list for Fire Fighter (M2542M) Jersey City.

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 16TH DAY OF DECEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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and
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c: Matthew Rivera
Michael L. Prigoff, Esq.
Robert J. Kakoleski
Kenneth Connolly

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