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STATE OF NEW JERSEY

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

In the Matter of J.L., Sheriff's Officer
(S9999M), Essex County

CSC Docket No. 2014-2998

Medical Review Panel Appeal

ISSUED: MAY 08 2015 (BS)

J.L., represented by Damian P. Conforti, Esq., appeals his rejection as a Sheriff's Officer candidate by the Essex County Sheriff's Office and its request to remove his name from the eligible list for Sheriff's Officer (S9999M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on December 22, 2014, which rendered the attached report and recommendation on December 22, 2014. Exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. The test results and procedures and the behavioral record, when viewed in light of the Job Specification for Sheriff's Officer, indicate that the applicant is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. The Panel recommended that the candidate be restored to the eligible list.

In his exceptions, the appellant agrees with the Panel's report and recommendation and requests that, in addition to being restored to the list, he be awarded back pay, seniority, and a reimbursement of costs incurred by him in having to appeal and seek reinstatement.

CONCLUSION

Having considered the record and the Medical Review Panel's Report and Recommendation issued thereon, and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Review Panel's Report and Recommendation. Therefore, the appellant shall be restored to the subject eligible list and appointed with a retroactive date of appointment absent any disqualification issues ascertained through an updated background check. However, the Commission does not grant any other relief, such as back pay or counsel fees. In that regard, *N.J.A.C. 4A:2-1.5(b)* provides in pertinent part that:

[b]ack pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. *See N.J.A.C. 4A:2-2.10*. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the [Commission] or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

The instant matter is not a disciplinary or layoff appeal, nor is this a situation where the appointing authority has failed or delayed to carry out a Commission order. Rather, the appointing authority offered the appellant employment, and relied on the report and recommendation of its psychological evaluator, Dr. Susan A. Furnari, to remove him from the subject eligible list. The foregoing does not demonstrate that the appointing authority abused its discretion, acted in bad faith, or had an invidious reason to request the appellant's removal. Therefore, under these circumstances, there is no basis to grant the appellant's request for back pay and counsel fees. *See e.g., In the Matter of A.B., County Corrections Officer, Essex County*, Docket No. A-1232-13T1 (App. Div. March 27, 2015) (The Appellate Division affirmed the decision of the Commission, which granted the appellant's psychological disqualification appeal and ordered retroactive seniority but did not award back pay or counsel fees, noting that, in non-disciplinary appeals, the rules place strict limits on the circumstances where back pay and counsel fees can be awarded). Accordingly, the appellant's request for back pay and counsel fees is denied.

ORDER

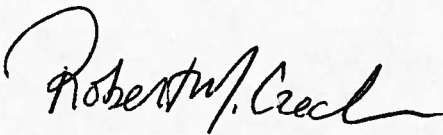
The Civil Service Commission finds that the appointing authority has not met its burden of proof that J.L. is psychologically unfit to perform effectively the duties of a Sheriff's Officer and, therefore, the Commission orders that his name be

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 appellant be granted a retroactive date of appointment to 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 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 6TH DAY OF MAY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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Attachment

c: J.L.
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