



STATE OF NEW JERSEY

In the Matter of J.W.R.,
Police Officer (S9999U), Woodbridge

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

CSC Docket No. 2019-1764

Medical Review Panel Appeal

ISSUED: JULY 31, 2020 (BS)

J.W.R., represented by Oleg Nekritin, Esq., appeals his rejection as a Police Officer candidate by the Woodbridge Police Department and its request to remove his name from the eligible list for Police Officer (S9999U), Woodbridge on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on November 20, 2019, which rendered its report and recommendation on November 20, 2019. Exceptions were filed on behalf of the appellant and cross exceptions on behalf of the appointing authority.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Betty McLendon (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as currently working as a Sheriff's Officer who has experienced adjustment problems since his appointment in September 2017. Current assessment notes concern regarding the appellant's maturity, personal and professional insights, and judgment and decision making skills which are judged as a deterrent to his abilities to take on the duties and responsibilities required of a Police Officer. Dr. McLendon opined that his present level of maturity and judgment does not support an ability to make a good adjustment to the subject

position. Dr. McLendon concluded that the appellant was not psychologically suitable for employment as a Police Officer.

Dr. Daniel P. Greenfield (evaluator on behalf of the appellant) carried out a psychiatric evaluation of the appellant and reviewed the relevant documentation. Dr. Greenfield opined that he respectfully disagreed with the conclusions of Dr. McLendon.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The appellant's history as a Sheriff's Officer was marred with disciplinary difficulties which included an internal affairs investigation for failing to perform the duties of the position adequately. Additionally, after being formally reprimanded for calling out sick, the appellant's use of sick time and lacking advance notice when calling out, he was placed on "sick time monitoring," which required him to provide a doctor's note every time he called out sick. The appellant resigned as a Sheriff's Officer and went back to work in the maintenance department. The Panel noted that the position of Sheriff's Officer is more structured than that of a Police Officer, who is out in the field interacting with the public on his/her own with little supervision. In addition, a jurisdiction counts on Police Officers to show up to work and be ready to fulfill their duty on a daily basis. The Panel found that the appellant's performance as a Sheriff's Officer did not demonstrate maturity, professional insight, or sound decision-making skills which was consistent with Dr. McLendon's evaluation. The Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is psychologically unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld.

In his exceptions, the appellant asserted that he was denied due process because the Panel meeting commenced before the arrival of his attorney¹ and the Panel commenced the hearing without the appellant's counsel present. The appellant argued that once a proceeding takes place without a party's attorney being present, any subsequent results are vacated. The appellant also asserted that the Panel failed to allow his attorney to conduct a direct examination or re-direct examination of the appellant. With regard to the previous disciplinary actions against him, the appellant claimed the attendance issues were "overstated" and asserted that he "accepted responsibility for his conduct and even acknowledged though out" the Panel meeting that he accepted discipline and "learned from his mistakes." Further, the Panel meeting focused on his attendance problems and failed to address his overall work performance and evaluations. The appellant argued that the Panel failed to take into account the character recommendations of his supervisors and co-workers, ignored his "history of remarkable performance,"

¹ The appellant's attorney, Oleg Nekritin, Esq., arrived 12 minutes late to the November 20, 2019 Medical Review Panel meeting.

and misapplied his attorney's closing argument that "past performance is the best indicator of future performance." The appellant cited a number of examples of his work performance. In addition, the appellant has completed various coursework to become a Police Officer. The appellant contended that the Panel's time constraints, failure to take in the appellant's complete record, failure to give adequate weight to Dr. Greenfield's evaluation, the restricted testimony and presentation allowed his attorney, the inclusion of a Dr. McLendon letter the day of the meeting, and the fact that the proceeding was not recorded all infringed on the appellant's right to due process. Finally, the appellant noted that Dr. McLendon had previously evaluated him for an Auxiliary Police Officer and that this "created the possibility for and then actual researcher's bias." Accordingly, the appellant asserts that his disqualification should be reversed.

In its cross exceptions, the appointing authority, represented by Daniel Pierre, Esq., asserts that, contrary to the appellant's assertion that his absenteeism was "overstated," there were a number of questionable incidents in the appellant's work record which he attempted to minimize during Dr. McLendon's interview. Further, the test data itself supports the appellant's unsuitability for Police work, including an elevation of the passivity scale meaning he might be easily intimidated by others. The appointing authority noted that the appellant was deceptive and dismissive in his responses during Dr. McLendon's interview and that she had concerns "regarding his maturity, personal and professional insights, judgments and decision making skills which are judged as a deterrent" to his performing as a Police Officer. Contrary to the appellant's argument that the Panel failed to provide adequate weight to the evaluation of Dr. Greenfield, the appointing authority asserted that the report of Dr. Greenfield "revealed multiple potentially disqualifying information, such as his excessive absenteeism at work, his attendance at school, and his failure to report work and school related disciplines." The appointing authority noted that although Dr. Greenfield disagreed with Dr. McLendon's conclusion, Dr. Greenfield did not affirmatively say that the appellant was suitable for employment as a Police Officer. The appointing authority contended that Dr. McLendon had advised she would be traveling out of State the date of the Panel meeting. Although the appointing authority requested an adjournment to allow Dr. McLendon the opportunity to attend, the request was denied. Hence, Dr. McLendon submitted an email confirming her opinion in the matter which was presented at the meeting. Dr. McLendon's email included no new substantive information not already detailed in her original report. The appointing authority argued that the appellant's disciplinary history rendered him unsuitable for police work and the Panel focused on his record as a Sheriff's Officer which included eating on duty, using his cellphone, and reading a book on duty, all of which constituted breaches of security, in addition to his absenteeism. Police Officers are held to a higher standard of personal accountability and must have the ability to follow rules, find practical ways of dealing with problems, and take charge of various situations. The appellant's "track record" did not demonstrate the

necessary maturity, judgment, or professionalism expected of a Police Officer. With regard to the appellant's argument that his attorney was not permitted to examine or cross examine witnesses, the appointing authority was not permitted to do this either, rendering his argument baseless. Similarly, the Panel is not required to record the meeting. Finally, the appellant did not raise the issue of his previous evaluation by Dr. McLendon until after the Panel submitted its report. Therefore, the appointing authority respectfully requests that the Commission uphold the findings and conclusions of the Panel, which are adequately supported by the record.

CONCLUSION

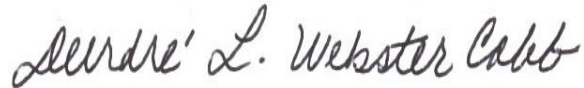
The Civil Service Commission has reviewed the report and recommendation of the Medical Review Panel. The Commission notes that the Panel conducts an independent review of the raw data presented by the parties as well as the recommendations and conclusions drawn by the various evaluators and that, in addition to the Panel's own review of the results of the tests administered to the appellant, it also assesses the appellant's presentation before it prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented. In the instant matter, the Commission finds the exceptions presented by the appellant not to be persuasive. With regard to the appellant's assertion that his attorney was not permitted to conduct an examination, *N.J.A.C. 4A:4-6.5(g)* states in pertinent part that the Civil Service Commission either conduct a written record review or submit psychological appeals to the New Jersey Medical Review Panel. As such, a Panel meeting is not a formal hearing where testimony is given and examinations and cross examinations are permitted. Rather, it affords the members of the Panel the opportunity to question the appellant directly to clarify his responses to test items and behaviors in his own words. In this regard, the Commission notes that its Panel of qualified and licensed Psychologists and Psychiatrist reviewed all of the raw test data, reports and opinions of Drs. McLendon and Greenfield prior to the meeting, as well as having the opportunity to question and observe the appellant, and rendered its own expert opinion in this matter. The Commission defers to and agrees with the expert opinion of its Panel.

ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that J.W.R. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be removed from the subject eligible list.

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 29TH DAY OF JULY, 2020



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