



STATE OF NEW JERSEY

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

In the Matter of K.J.S., Fire Fighter
(M1844W), City of Jersey City

CSC Docket No. 2021-1816

Request for Reconsideration

ISSUED: JANUARY 21, 2022 (BS)

K.J.S., represented by Michael J. Prigoff, Esq., requests reconsideration of the decision rendered on April 7, 2021 by the Civil Service Commission (Commission) which found him to be psychologically unfit for a position as a Fire Fighter, City of Jersey City. That decision is attached hereto and incorporated herein.

By way of background, the appointing authority requested the removal of the petitioner from the Fire Fighter (M1844W), City of Jersey City, eligible list on the basis of psychological unfitness to perform the duties of a Fire Fighter. The appeal was brought before the Medical Review Panel (Panel), which recommended upholding the petitioner's removal. In particular, the Panel found the concerns raised by the appointing authority's evaluator were substantiated in that the petitioner had displayed a pattern of not addressing his driving record, employment issues, and financial obligations in a timely and responsible manner. The Panel indicated that, while some of the gaps in the petitioner's employment have been due to "situational variables," he had not demonstrated "a consistent pattern of planning a responsible course of action when he has had gaps in his employment." Additionally, it stated that the petitioner failed to take action to address the financial issues which led to his driver's license being suspended. The Panel also noted that the petitioner's responses to questions posed by the Panel regarding the appointing authority's concerns did not show evidence that he had significantly improved in addressing problems in his life. Upon its review, the Commission adopted the Panel's Report and Recommendation and upheld the petitioner's removal from the subject eligible list, noting that the Panel accurately characterized the petitioner's incidents regarding alcohol and the altercation outside the bar, his employment history, his driving record, and his financial obligations. It also noted that the Panel did not find the petitioner's underage drinking incident or the physical altercation psychologically

disqualifying. Additionally, the Commission indicated that the petitioner's own evaluator noted that testing revealed that he may have some "compulsive tendencies" and possible issues in decision making. Therefore, the Commission concluded that the appointing authority had met its burden of proof that the petitioner was psychologically unfit to perform effectively the duties of a Fire Fighter. *See In the Matter of K.J.S.* (CSC, decided April 7, 2021).

In his request, K.J.S. argues that the Panel's assessment that he has not maintained a consistent employment history or adequately planned for gaps in employment is patently false. The petitioner states his employment history has been exemplary, with no complaints or discipline. The petitioner also denies having engaged in a "bar fight," which he claims that the Commission characterized as such. Rather, the petitioner asserts that he was verbally accosted in a bar, left when requested without engaging in a fight, and then was viciously attacked from behind without provocation and beaten by off-duty Jersey City Police Officers and the Mayor's son. With regard to the petitioner's driving history and financial obligations, the petitioner maintains that the Commission ignored the relationship between the impact of a car accident with a resultant insurance increase and other financial obligations, including motor vehicle surcharges and car and student loans, which made it difficult for the petitioner to keep up with his obligations. In addition, he contends that the Commission also disregarded his progress in addressing these matters. Further, although the petitioner notes that his evaluator commented that he may have "compulsive tendencies," his evaluator found no evidence of underlying psychopathological conditions and that it was the evaluator's opinion that these issues could be addressed during the training and probationary period. Accordingly, the petitioner submits that the appointing authority failed to sustain its burden of proof by a preponderance of the evidence, and, as a result, the petitioner should be restored to the subject eligible list.

Although given notice of an opportunity to supplement the record within 20 calendar days of receipt of a letter dated October 22, 2021, which acknowledged the request for reconsideration, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, did not do so in timely manner. Rather, on December 1, 2021, it requested an extension of time to submit a response over the objection of the petitioner.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. 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. A review of the record in the instant matter reveals that reconsideration is not justified.

The instant matter is based on the assertion that the Commission relied on a number of faulty conclusions when arriving at its April 7, 2021 decision. Initially, it must be noted that the Panel did not find the petitioner's underage drinking incident and physical altercation psychologically disqualifying. Thus, the petitioner's argument with respect to the latter fails. Moreover, while the petitioner maintains that he was consistently employed, he does not deny that there were gaps in his employment. Additionally, the Commission reviewed the petitioner's driving record and the exceptions he filed to the Panel's Report and Recommendation in that regard, as well as his disagreement with the Panel's overall assessment, and once again finds that the Panel accurately characterized the petitioner's incidents regarding alcohol and the altercation outside the bar, his employment history, his driving record, and his financial obligations. Thus, while the Commission is cognizant of the petitioner's attempt to remedy his driving record and financial issues, and that these issues may have stemmed from the impact of a car accident, the petitioner's arguments on reconsideration does not persuade the Commission that a material error has occurred. In that regard, the Commission defers to the expert opinion of its Panel and notes that the issues raised by the petitioner are essentially the same and have been previously considered by the Commission. The Commission emphasizes that, in addition to the behavioral record, the petitioner was also determined psychologically unsuitable on the interpretation of the test data by licensed professionals and the Commission's adoption of the same. It is reiterated that although the petitioner's evaluator opined that he does not possess underlying psychopathological conditions, it was found in the testing that the petitioner may have "compulsive tendencies" and possible issues in decision making which are not suitable traits for a Fire Fighter.

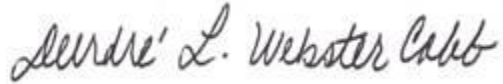
The standard for reconsideration of prior decisions outlined in *N.J.A.C. 4A:2-1.6(b)* is strictly construed and, in the instant matter, the petitioner has failed to satisfy this standard. After consideration of all of the relevant issues in this matter, the Commission finds that the petitioner has not demonstrated that a material error has occurred nor presented new evidence which would change the outcome of his case. Accordingly, the Commission finds no grounds on which to grant reconsideration of its prior decision. As such, the appointing authority's request for an extension to submit a response to the petitioner's request for reconsideration has been rendered moot.

ORDER

Therefore, it is ordered that the request for reconsideration be denied.

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 19TH DAY OF JANUARY, 2022



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