



	:	STATE OF NEW JERSEY
	:	
	:	FINAL ADMINISTRATIVE ACTION
	:	OF THE
In the Matter of B.N., Fire Fighter	:	CIVIL SERVICE COMMISSION
(M1518T), City of Elizabeth	:	
	:	
	:	
CSC Docket No. 2017-1541	:	Medical Review Panel Appeal
	:	

ISSUED: SEPTEMBER 7, 2018 (DASV)

B.N., represented by Anthony J. Chirles, Esq., appeals his rejection as a Fire Fighter candidate by the City of Elizabeth and its request to remove his name from the eligible list for Fire Fighter (M1518T) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was referred for independent evaluation by the Civil Service Commission (Commission) in a decision rendered April 18, 2018, which is attached. The appellant was evaluated by Dr. Robert Kanen, who rendered the attached Psychological Evaluation and Report on May 11, 2018. Exceptions were filed on behalf of the appointing authority, and cross exceptions were filed on behalf of the appellant.

The Psychological Evaluation and Report by Dr. Kanen discusses the evaluation procedure and reviews the previous psychological findings relative to the appellant. In addition to reviewing the reports and test data submitted by the previous evaluators, Dr. Kanen administered the following: Clinical Interview/Mental Status Examination, Wechsler Adult Intelligence Scale, 4th Edition, Millon Clinical Multiaxial Inventory – III (MCMI-III), and the Inwald Personality Inventory – II. Dr. Kanen noted that the appellant had been referred for independent psychological evaluation to determine his current level of psychological functioning and capacity for the position sought. In particular, Dr. Kanen found that all scales of the MCMI-III were within normal ranges and the appellant showed no elevation on post-traumatic stress. Moreover, the appellant

reported no symptoms of mental illness or symptoms associated with anxiety and panic. He answered “false” to various questions on the MCMI-III regarding flashbacks, traumatic experiences, and difficulty in falling asleep because of painful memories. In addition, Dr. Kanen indicated that upon interviewing him and on the personality test, the appellant demonstrated no evidence of post-traumatic stress disorder (PTSD) and he fell into the category of likely to recommend for employment in a public safety/security position. While Dr. Kanen acknowledged the concern that the appointing authority’s evaluator had regarding the appellant’s arrest record, he opined that the appellant’s 13 years in the Marine Corps overrode this early arrest history. Based on the foregoing findings and test results, Dr. Kanen concluded that the appellant was psychologically suited to serve as a Fire Fighter with the City of Elizabeth.

In its exceptions, the appointing authority, represented by Robert J. Lenahan, Jr., Special Counsel, submits the comments of Dr. Betty C. McLendon, the appointing authority’s evaluator. Dr. McLendon indicates that Dr. Kanen may have based his opinion on information that was minimized or incomplete because the appellant “committed asocial, illegal and criminal activities between the age of 15” through the age of 24. Dr. McLendon emphasizes that the record reveals seven documented charges against the appellant, including theft, physical injury to a minor, and an attack upon a female. Dr. McLendon notes that “Dr. Kanen spoke only in facts about this behavior” and not about the appellant’s psychological make-up and functioning. For instance, there was not a depiction of the appellant offering regret or demonstrating sincerity that he gained insight regarding his behavior, but merely that the appellant served in the military as a means of self-improvement. Moreover, Dr. McLendon indicates that the appellant committed offenses after he had been enlisted in the military. Furthermore, the appellant was given a 50% disability designation for post-traumatic stress and was still in treatment at the time he applied for the Fire Fighter position and during the pre-appointment evaluation, but later voluntarily discontinued treatment. Dr. McLendon suggests the appellant “single handedly made the decision to stop his treatment and it could be concluded within reason that it would have been perceived as a benefit to the process of seeking the position without regard for his health.” As for the questions on the test that Dr. Kanen administered, Dr. McLendon states that the appellant “has now mastered what he perceived as the ‘correct’ answer vers[us] the truthful answer.” Dr. McLendon concludes that the position sought requires physical fitness, (good) judgment, decision making skills, and impulse control “that has been lacking or highly questionable” during a substantial period of the appellant’s life which renders the appellant an unacceptable candidate for Fire Fighter.

In his cross exceptions, the appellant points out that the primary concern of the Medical Review Panel (Panel) was whether his post-traumatic stress would impact his ability to serve as a Fire Fighter. He states that the Panel saw him as an adult and observed his sincerity first-hand. In that regard, the appellant

emphasizes that the Panel indicated that a decade had passed since his last arrest and he appeared to have made significant changes to conform to the standards of lawful behavior. Moreover, the appellant urges the Commission to adopt the findings and conclusions of Dr. Kanen that he is unlikely to exhibit an antisocial attitude and has no evidence of PTSD or a mental illness. The appellant contends that Dr. McClendon “harps upon the incidents” that occurred when he was young and disregards his progress and accomplishments. Moreover, in support of his cross exceptions, the appellant submits a letter from Dr. Ronald G. Silikovitz, his evaluator, who states that Dr. Kanen’s report is “more balanced, more compelling, and more predictive of [the appellant’s] success as a firefighter than do Dr. McClendon’s reports.” The appellant maintains that both Dr. Silikovitz and Dr. Kanen have addressed the issue of concern regarding his post-traumatic stress, and both doctors concluded that he is psychologically fit to perform the duties of a Fire Fighter.

CONCLUSION

The Job Specification for the title of Fire Fighter is the official job description for such positions within the Civil Service. According to the specification, Fire Fighters are entrusted with the safety and maintenance of expensive equipment and vehicles and are responsible for the lives of the public and other officers with whom they work. Some of the skills and abilities required to perform the job include the ability to work closely with people, including functioning as a team member, to exercise tact or diplomacy and display compassion, understanding and patience, the ability to understand and carry out instructions, and the ability to think clearly and apply knowledge under stressful conditions and to handle more than one task at a time. A Fire Fighter must also be able to follow procedures and perform routine and repetitive tasks and must use sound judgment and logical thinking when responding to many emergency situations. Examples include conducting step-by-step searches of buildings, placing gear in appropriate locations to expedite response time, performing preparatory operations to ensure delivery of water at a fire, adequately maintaining equipment and administering appropriate treatment to victims at the scene of a fire, *e.g.*, preventing further injury, reducing shock, restoring breathing. The ability to relay and interpret information clearly and accurately is of utmost importance to Fire Fighters as they are required to maintain radio communications with team members during rescue and firefighting operations.

In the present matter, the Commission agreed with the Panel to refer the appellant for an independent evaluation to determine whether his PTSD, which resulted in a 50% disability veteran designation, would affect his ability to effectively perform the functions of a Fire Fighter. Both Drs. Kanen and Silikovitz found the appellant to have no current evidence of PTSD, which would affect his performance as a Fire Fighter. Additionally, while Dr. McClendon finds

psychological concerns regarding the appellant's arrest history, it is emphasized that the Panel and Drs. Kanen and Silikovitz have all suggested that the incidents were remote in time and the appellant has corrected his unlawful behavior, which notably has been demonstrated in his military service. Moreover, the appointing authority had the opportunity to request the removal of the appellant's name from the subject eligible list based on its background investigation of the appellant prior to subjecting him to a psychological examination. The appellant's arrest history is not the basis for his removal. *See In the Matter of K.W.* (CSC, decided June 20, 2018) (The Commission found that an undisclosed citation against the appellant did not rise to the level of rendering the appellant psychologically unfit to serve as a Correction Officer Recruit, particularly since the appointing authority had the opportunity to request the removal of the appellant's name from the list based on its background investigation, prior to subjecting him to a psychological examination). Further, the Commission is mindful that any potential behavioral or work performance issues can be addressed during a Fire Fighter's working test period.

Therefore, having considered the record and the independent Psychological Report and Recommendation issued thereon, and having made an independent evaluation of the same, including a review of the job specification for the position sought and the exceptions and cross exceptions filed herein, the Commission accepts and adopts the findings and conclusions as contained in the attached independent Psychological Report and Recommendation and orders that the appellant's appeal be granted.

ORDER

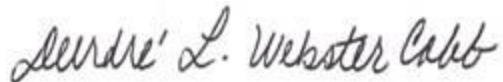
The Commission finds that the appointing authority has not met its burden of proof that B.N. is psychologically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that the appellant's name restored to the subject eligible list. Absent any disqualification 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 the appellant be granted a retroactive date of appointment to September 19, 2016, 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 5TH DAY OF SEPTEMBER, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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Attachment

c: B.N.
Anthony J. Chirles, Jr., Esq.
Robert J. Lenahan, Jr., Special Counsel
Kelly Glenn

last arrest and he appeared to have made significant changes to conform to the standards of lawful behavior. However, of primary concern was the possible impact of the appellant's PTSD symptoms to his performance as a Fire Fighter. At the Panel meeting, the appellant stated that he has "learned how to deal" with events from his military service and the signs and symptoms of PTSD. The appellant still carries the 50% disability designation. The Panel did not find that the two evaluations of the appellant adequately addressed this issue. Therefore, taking into account the evaluations made by the evaluators on behalf of the appointing authority and the appellant, and the appellant's presentation before the Panel, the Panel opined that further evaluation of the appellant was necessary before his psychological suitability for employment as a Fire Fighter could be adequately determined. Accordingly, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Fire Fighter, justified sending the appellant for an independent psychological evaluation which should address the degree to which the appellant's current signs and symptoms of PTSD would affect his ability to function appropriately as a Fire Fighter.

By way of exceptions, the appellant submits a supplemental report from Dr. Silikovitz. Dr. Silikovitz evaluated the appellant for an additional half an hour by telephone for the purposes of assessing the degree to which the appellant's current signs and symptoms of PTSD would affect his ability to function in the position sought. He reiterates that the appellant discontinued treatment for PTSD in July 2016. The appellant no longer experiences nightmares, cold sweats, or startle responses. However, the appellant stated to Dr. Silikovitz that he is "aware of my surroundings." Moreover, the appellant regularly engages in drills for the United States Marines throughout the year and is responsible for teaching yearly classes. At no time has any symptom of PTSD appeared or affected his performance in the drills or teaching assignment. Dr. Silikovitz concludes that the appellant is well fit to serve as a Fire Fighter and "[t]here is no clinical evidence that any symptoms of PTSD would likely occur or in any way affect his performance in that capacity, or his feelings in carrying out those duties."

Despite the opportunity, the appointing authority did not reply.

CONCLUSION

The Civil Service Commission (Commission) has reviewed the report and recommendation of the 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. The Commission agrees with the Panel's recommendation and finds it necessary to refer the appellant for an independent evaluation by a New

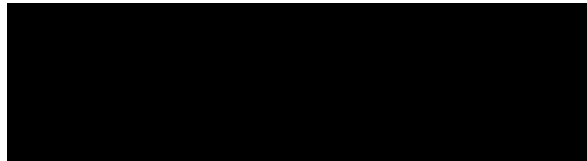
Jersey licensed psychologist. Although Dr. Silikovitz further questioned the appellant regarding the concerns of the Panel, his interview was not made in person and no additional testing was involved. It is best that the appellant is seen by the independent evaluator who will be able to assess his speech and appearance upon interviewing him and administer any necessary test to confirm whether his PTSD, which resulted in a 50% disability veteran designation, would affect his ability to effectively perform the functions of a Fire Fighter.

ORDER

The Commission therefore orders that B.N. be administered an independent psychological evaluation. The Commission further orders that the cost incurred for this evaluation be assessed to the appointing authority in the amount of \$530. Prior to the Commission's reconsideration of this matter, copies of the independent evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

B.N. is to contact Dr. Robert Kanen, the Commission's independent evaluator, within 15 days of the issuance of this determination in order to arrange for an appointment. Dr. Kanen's address is as follows:

Dr. Robert Kanen



If B.N. does not contact Dr. Kanen within the time period noted above, the entire matter will be referred to the Commission for final administrative determination and the appellant's lack of pursuit will be noted.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF APRIL, 2018

A handwritten signature in cursive script that reads "Deirdre L. Webster Cobb".

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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