



STATE OF NEW JERSEY

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

In the Matter of D.M., Correctional
Police Officer (S9999U),
Department of Corrections

CORRECTED DECISION

CSC Docket No. 2019-2232

Medical Review Panel

ISSUED

JUNE 5, 2020 (DASV)

D.M. appeals his rejection as a Correctional Police Officer candidate by the Department of Corrections and its request to remove his name from the eligible list for Correctional Police Officer (S9999U) 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 February 26, 2020, which is attached. The appellant was evaluated by Dr. Robert Kanen, who rendered a Psychological Evaluation and Report on March 16, 2020. No exceptions or cross exceptions were filed by the parties.¹

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; Shipley Institute of Living Scale; Public Safety Application Form; Behavioral History Questionnaire, and the Inwald Personality Inventory – II (Inwald). It is noted that the Commission had ordered that the evaluation include an in-depth assessment of the appellant’s ability to maintain appropriate boundaries in his interactions with

¹ Although the parties did not file exceptions, the appellant sent an email emphasizing that Dr. Kanen found him psychologically suitable for the position sought based on his evaluation and the test results.

individuals and his ability to meet the employment demands of a Correctional Police Officer. Upon his interview of the appellant and based on the test results, Dr. Kanen found that the appellant was functioning within “normal ranges” and had no psychopathology or personality problems that would interfere with his work performance. The appellant also has the cognitive skills necessary to perform the duties of the position. Further, in his interview with the appellant, Dr. Kanen reviewed the two temporary restraining orders that was issued against him. Dr. Kanen found no evidence of physical or threatening behavior by the appellant in the two cases and the charges against him had been dismissed. It was Dr. Kanen’s opinion that the TROs did not reflect that the appellant has aggressive tendencies. In addition, although the appellant was defensive and guarded in the personality test, he falls in the category likely to recommend for employment in a public safety/security position. As to the Panel’s request, regarding field training officer predictions, Dr. Kanen indicated that the appellant’s testing revealed that the appellant “falls into the category likely to meet expectations in terms of his ability to control conflict, in his ability to relate and work with the public” Dr. Kanen opined that it is unusual that a candidate falls into the likely to recommend category and meet expectations in all five measurements on the Inwald. Therefore, Dr. Kanen concluded that the appellant was psychologically suited for employment as a Correctional Police Officer with the Department of Corrections.

CONCLUSION

The Job Specification for Correctional Police Officer is the official job description for such State positions within the Civil Service system. According to the specification, a Correctional Police Officer exercises full police powers and acts as a peace officer at all times for the detection, apprehension, arrest, and conviction of offenders against the law. Additionally, a Correctional Police Officer is involved in providing appropriate care and custody of a designated group of inmates. These officers must strictly follow rules, regulations, policies and other operational procedures of that institution. Examples of work include: encouraging inmates toward complete social rehabilitation; patrolling assigned areas and reporting unusual incidents immediately; preventing disturbances and escapes; maintaining discipline in areas where there are groups of inmates; ensuring that institution equipment is maintained and kept clean; inspecting all places of possible egress by inmates; finding weapons on inmates or grounds; noting suspicious persons and conditions and taking appropriate actions; and performing investigations and preparing detailed and cohesive reports.

The specification notes the following as required skills and abilities needed to perform the job: the ability to understand, remember and carry out oral and written directions and to learn quickly from written and verbal explanations; the ability to analyze custodial problems, organize work and develop effective work methods; the ability to recognize significant conditions and take proper actions in accordance with

prescribed rules; the ability to perform repetitive work without loss of equanimity, patience or courtesy; the ability to remain calm and decisive in emergency situations and to retain emotional stability; the ability to give clear, accurate and explicit directions; and the ability to prepare clear, accurate and informative reports of significant conditions and actions taken.

In the present matter, the Commission referred the appellant for an independent psychological evaluation. Dr. Kanen performed additional tests necessary to determine the appellant's psychological fitness for a Correctional Police Officer position and found that the appellant is functioning within "normal ranges" and does not possess psychopathology or personality problems that would interfere with his work performance. Dr. Kanen also conducted the necessary tests and a Clinical Interview which addressed the concerns of the Panel. Dr. Kanen did not find that the appellant's TROs reflected aggressive tendencies and that the appellant has the ability to relate and work with the public. The evaluation and tests also revealed that the appellant has the ability to meet the employment demands of a Correctional Police Officer. Accordingly, Dr. Kanen found the appellant psychologically suited for a Correctional Police Officer position with the Department of Corrections.

Therefore, having considered the record and the independent Psychological Evaluation and Report issued thereon, and having made an independent evaluation of the same, including a review of the job specification for the position sought, the Commission accepts and adopts the findings and conclusions as contained in the independent Psychological Evaluation and Report and orders that the appellant's appeal be granted. The Commission is mindful that any potential behavioral or work performance issues can be addressed during the appellant's working test period as a Correctional Police Officer.

ORDER

The Commission finds that the appointing authority has not met its burden of proof that D.M. is psychologically unfit to perform effectively the duties of a Correctional Police Officer and, therefore, the Commission orders that the appellant's 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 the appellant be granted a retroactive date of appointment to June 26, 2019, 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, 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 DAY 3RD OF JUNE, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: D.M.
Veronica Tingle
Division of Agency Services



STATE OF NEW JERSEY

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CIVIL SERVICE COMMISSION**

In the Matter of D.M., Correctional
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CSC Docket No. 2019-2232

Medical Review Panel

ISSUED: FEBRUARY 27, 2020 (DASV)

D.M. appeals his rejection as a Correctional Police Officer candidate by the Department of Corrections and its request to remove his name from the eligible list for Correctional Police Officer (S9999U) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel (Panel) on November 20, 2019, which rendered a report and recommendation. Exceptions were filed by the appellant. No exceptions were filed by the appointing authority.

The report by the Panel discusses all submitted evaluations and the information obtained from the meeting. The negative indications related to the appellant’s integrity and judgment. In that regard, Dr. Guillermo Gallegos, the appointing authority’s psychological evaluator, indicated that the appellant had previously been evaluated by his office in 2015, and at that time, the appellant failed to report a temporary restraining order (TRO) against him in 2014 by a former girlfriend. Additionally, Dr. Gallegos stated that the appellant was named in another TRO in May 2018 by a male friend. As a result, he was suspended by the Paramus Police Department from his Special Police Officer position for three days. Dr. Gallegos also indicated that the appellant provided inconsistent information regarding his driving record and educational history between his two evaluations. Consequently, Dr. Gallegos did not recommend him for a Correctional Police Officer position. The appellant’s psychological evaluators, Vimarsh Patel, PA-C, and Dr. Sylvio Burcescu “cleared” the appellant to work, indicating that the appellant had no psychological issues to prevent him from seeking a position with the Department of Corrections.

Upon its evaluation, the Panel noted that the concerns of the pre-appointment evaluation involved the issues of the appellant's interpersonal interactions and judgment in relationships. During the Panel meeting, the appellant was questioned with regard to his two restraining orders. He explained that his former girlfriend thought he was following her and texting her too much after the relationship ended. The TRO, however, was dismissed in court and the appellant has not had any contact with the former girlfriend. As to the second TRO, the appellant explained that he "was getting to close" to his friend's family by "helping out." This TRO was also dismissed in court. The Panel found that the appellant's descriptions of these interactions to be "vague and inconsistent." Nonetheless, while the Panel agreed that the concerns regarding the appellant's interpersonal history had merit, it was unable to determine the appellant's suitability for the position of Correctional Police Officer. His work performance as a driver was not indicative of how well he would perform in the position sought. Therefore, based on the evaluations, the test results of the appellant, and his presentation at the meeting, the Panel recommended that the appellant undergo an independent evaluation, which shall include an in-depth evaluation of the appellant's ability to maintain appropriate boundaries in his interactions and his ability to meet the employment demands of a Correctional Police Officer.

In his exceptions, the appellant advises that he sought another assessment from Vimarsh Patel, PA-C, who reports that "[t]here is no new updates with the patient's personal or professional life to warrant additional testing . . . and is again psychologically cleared for work." Moreover, the appellant clarifies that his TROs "were more of learning lessons." He states that the first one occurred when he was 17 or 18 years old and in high school. It was his "first real relationship." The appellant notes that he has had other relationships after that and has been in a current relationship for a year and a half. The other TRO "was basically [him] helping people [he] thought were close to [him] and it didn't work out." The appellant emphasizes that both TROs were dismissed and he has "no history of violence or being reckless."

CONCLUSION

The Civil Service Commission (Commission) has reviewed the report and recommendation of the Panel and the exceptions filed by the appellant. Although the appellant's psychological evaluator opines that no additional testing is required, the Commission relies on the expertise of the Panel and is persuaded that a more in-depth psychological evaluation is necessary. In that regard, 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

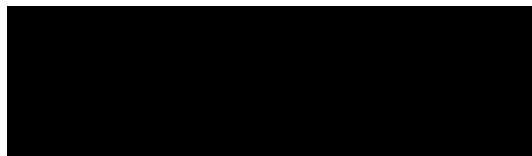
prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented. Moreover, according to the job specification, a Correctional Police Officer is involved in providing appropriate care and custody of a designated group of inmates. Additionally, a Correctional Police Officer exercises full police powers and acts as a peace officer at all times for the detection, apprehension, arrest, and conviction of offenders against the law. Therefore, it is important to determine whether the appellant's behavioral record would impact his ability to perform effectively the duties of the position, which clearly necessitate appropriate interactions with individuals. Therefore, the Commission agrees with the Panel's recommendation that an additional evaluation be conducted and finds it necessary to refer the appellant to a New Jersey licensed psychologist which shall include an in-depth assessment of the appellant's ability to maintain appropriate boundaries in his interactions with individuals and his ability to meet the employment demands of a Correctional Police Officer.

ORDER

The Commission therefore orders that D.M. be administered an independent psychological evaluation as set forth in this decision. 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 consideration of the evaluation, copies of the independent evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

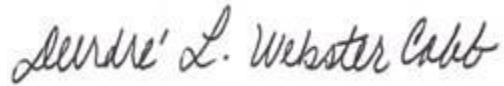
D.M. is to contact Dr. Robert Kanen, the Commission's independent evaluator, within 15 days of the issuance date on this determination to schedule an appointment. Dr. Kanen's contact information is as follows:

Dr. Robert Kanen



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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 26TH DAY OF FEBRUARY, 2020



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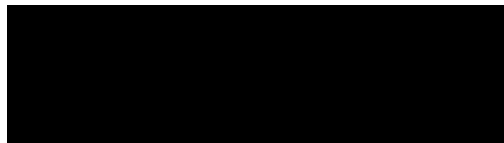
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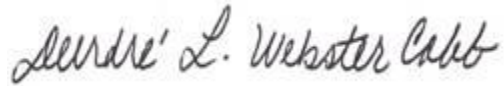
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