

STATE OF NEW JERSEY

CIVIL SERVICE COMMISSION

In the Matter of E.F., Fire Fighter
(M1554T), Mount Laurel Fire District 1



Medical Review Panel Appeal

CSC Docket No. 2019-2994

ISSUED: NOVEMBER 6, 2020 (BS)

E.F., represented by Thomas F. Flynn, III, Esq., appeals his rejection as a Fire Fighter candidate by Mount Laurel Fire District 1 and its request to remove his name from the eligible list for Fire Fighter (M1554T) 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 February 26, 2020, which rendered a Report and Recommendation on March 1, 2020. Exceptions were filed on behalf of the appointing authority, and cross exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations. It indicates that Dr. Jennifer Kelly, evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and noted the appellant as unwilling to provide details of his juvenile arrest record in 2006 claiming his attorney had advised him not to do so. Dr. Kelly reviewed the appellant’s background history, interview data, and test results which revealed “multiple examples of inconsistent information” being provided by the appellant. Dr. Kelly also made note that the candidate’s EMT-Basic certification had elapsed due to what the appellant described as a misunderstanding of the paperwork since he was told the certification was good for a certain time period. Dr. Kelly found that the withholding of pertinent information also suggested that the appellant would be at a high risk for job performance deficiencies in the areas of social competence, decision making/judgment, conscientiousness, and integrity. Consequently, Dr. Kelly did not recommend the appellant for appointment to the subject position.

Additionally, Dr. Ange Puig, evaluator on behalf of the appellant, carried out a psychological evaluation. Although Dr. Puig refers to psychological testing, it was not clear whether or not he was referring to the testing done by Dr. Kelly and

reviewed by him, or a re-administration of those instruments. It is noted that both doctors listed the California Psychological Inventory (CPI) and Psychological History Questionnaire/Report (PsyQ) as assessment tools. The test data from Dr. Kelly was submitted and Dr. Puig summarized the findings of those tests. Moreover, Dr. Puig noted that there were no “selection relevant” items endorsed by the appellant that would suggest possible performance problems. Additionally, the test data did not suggest any indications of substance use issues. Based on the interview, test findings, and materials reviewed, Dr. Puig found that, with the exception of the incident at age 16, the appellant presented with no significant instances of antisocial behavior or difficulty with interpersonal relationships. Accordingly, Dr. Puig could find no reason why the appellant was not psychologically fit to serve as a Fire Fighter.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. While Dr. Kelly was concerned about inconsistent and withheld information, Dr. Puig was of the opinion that the test data supported the appellant’s psychological suitability for the position of Fire Fighter. Upon its review, the Panel noted that, after the appellant’s arrest in 2006 at age 16 for criminal sexual contact and eventual plea to a harassment charge, the record revealed no other substantial behavior problems. In that regard, while the Panel was concerned with the 2006 incident, it occurred 14 years ago. The record also had been expunged in 2011. There was no evidence in the behavioral history of any repetition of this type of behavior, nor did the appellant harbor any attitudes which would condone a repetition of such behavior. It is noted that the appellant is now 31 years old. Additionally, there were no significant conflicts during his tenure as a volunteer firefighter with Mount Laurel and no psychological or clinical findings “in non-support of his ability to meet the requirements of a fire fighter.” The Panel further noted that the hiring authority, a Fire District, did not see the appellant’s reprimands at the volunteer fire department as disqualifying when they gave him the conditional offer of employment. The Panel also did not find these reprimands to be psychologically disqualifying.

Moreover, the Panel indicated that it was difficult to evaluate the appellant’s employment history as he has worked primarily for his father, so there are no objective performance measures. However, the appellant filed taxes for this period. The Panel also noted that the appellant was terminated from one position due to poor sales. Additionally, with regard to a rental property business, the appellant indicated that he was unaware that he was required to register all properties with the relevant township, although one of his properties was registered, at that time. He subsequently registered all of the properties. In addition, the Panel discussed the issue of the appellant’s rejection for a firearms permit. In that regard, it is noted that the appellant’s 2010 and 2011 denials were due to “public health, safety, and welfare” concerning the 2006 incident. The 2011 denial was also based on the appellant leaving questions blank regarding his mental health history. The appellant indicated that he briefly saw a therapist surrounding his parent’s divorce, but he did not have

any mental health treatment or was psychiatrically hospitalized. The Panel determined that, while the failure of the appellant to carefully review the firearms application completed by his father was irresponsible, this occurred nine years ago. The appellant has not had any legal issues outside of the juvenile offense and has not had any other issues such as substantial motor vehicle violations, credit issues, substance abuse issues, or other behavioral issues. As a result, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Fire Fighter, indicate that the candidate is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. Therefore, the Panel recommended that the appellant be reinstated to the eligible list.

In its exceptions, the appointing authority argues that without the raw test scores and interpretive material from Dr. Puig's assessment, it leaves it at a disadvantage in preparing these exceptions. Additionally, the appellant provided Dr. Puig with details concerning his juvenile arrest but refused to discuss the details with Dr. Kelly. The appointing authority asserts that his refusal to be forthcoming with Dr. Kelly regarding this incident is one of the principal reasons she disqualified him. With regard to the firearms permit, the appointing authority argues that the appellant made deliberate omissions pertaining to mental health issues which demonstrates he has "a character problem (honesty) inconsistent with being a firefighter." During Dr. Kelly's evaluation, the appellant consciously chose to leave out information which would be viewed as unfavorable. The appointing authority contends that "[i]t is imperative that public safety personnel be held to a high standard with regard to issues involving rule following/socialization, honesty, and integrity," all of which the appellant has failed to demonstrate.

In his cross exceptions, the appellant argues that the appointing authority was present at the Panel meeting and could have requested to review Dr. Puig's data but failed to do so. Dr. Puig's report in which the appellant's arrest was discussed was provided to the Panel for review. The appellant disagrees with the appointing authority's representation that failing to answer questions on a form is proof of some sort of character flaw. The appellant contends that, at the Panel meeting, he was "forthright, clear, and convincing," and his credibility was assessed by the Panel. The Panel concluded that he was psychologically suitable for employment as a Fire Fighter. Accordingly, the appellant maintains that he should be reinstated into the process as recommended by the Panel.

CONCLUSION

The Job Specification for the title of Fire Fighter is the official job description for such positions within the Civil Service system. 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 instant matter, the Commission does not find the exceptions presented by the appointing authority to be sufficiently persuasive to remove the appellant from the subject eligible list at this juncture. Rather, it concludes that the appellant is deserving of further evaluation. Initially, the appointing authority argues, among other things, that without the raw test scores and interpretive material from Dr. Puig's assessment, it leaves it at a disadvantage in preparing its exceptions. It is noted that *N.J.A.C. 4A:4-6.5(f)5* provides, in part, that professional reports submitted by either of the parties shall include all tests that have been administered and all raw data, protocols, computer printouts and profiles from these tests. However, as set forth by the Panel, it was not clear whether or not Dr. Puig was referring to the testing done by Dr. Kelly and reviewed by him, or a re-administration of those instruments as both doctors noted the CPI and PsyQ tests as assessment tools used. Nevertheless, the Panel was provided with Dr. Kelly's raw data and Dr. Puig summarized the findings of those tests. The Panel found the information submitted by the appellant sufficient to render its determination. To that extent, the Commission does not find the Panel's determination to be lacking. The Commission emphasizes that while the appointing authority has the burden of proof by the preponderance of the evidence to remove the appellant from the subject eligible list due to psychological reasons, the appellant must nevertheless challenge the pre-appointment evaluation on appeal. If he does not submit all relevant documents to support his case, he then does so at his peril.

Furthermore, the Panel did not find the 2006 incident or other behavioral issues in the appellant's background, as raised by the appointing authority in its exceptions, as psychologically disqualifying. However, the Commission is not comfortable with restoring the appellant to the appointment process without further evaluation of the appellant's psychological suitability. The Commission notes that the Panel's Report and Recommendation, while addressing the 2006 incident, did not address the issue

of the appellant's refusal to discuss the matter with Dr. Kelly, even though she was aware of the incident from the background report. Additionally, the Commission finds the appellant's omissions when completing a firearms permit to be troublesome and notes that he is all too willing to shift the blame to someone else and avoid personal responsibility for his actions, whether it was to his father with regard to the omissions on the firearms permit or when he allowed his EMT-Basic certification to lapse and did not have all his rental properties registered due to a miscommunication or unawareness. Equally disturbing to the Commission is that, at age 31, the appellant lacks an objective employment history in that, aside from clerking for his father and his own business, he has only had other relatively short-term employments, including one that ended in termination. It is a well-known adage that the best indicator of future success is past performance but, in this case, in the absence of objective reports concerning his employment and workplace behavior, his employment record cannot be adequately evaluated. Accordingly, the Commission finds that a closer look needs to be taken at the appellant's behavioral record, specifically his subjective work history, to determine if this would adversely relate to the appellant's ability to successfully serve the public as a Fire Fighter. This closer look should also focus on the issues of judgment, integrity, and veracity in light of the Panel's failure to evaluate his omissions and shortcomings with regard to taking personal responsibility. As set forth above, the Commission finds that the Panel did not address the issue of the appellant's refusal to discuss the 2006 incident with Dr. Kelly.

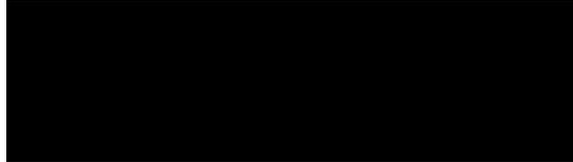
Therefore, having considered the record, including the Job Specification and the duties and abilities encompassed therein, the Panel's Report and Recommendation issued thereon, and the exceptions and cross exceptions filed by the parties, and having made an independent evaluation of the same, the Commission finds it necessary that the appellant submit to an independent psychological evaluation by a New Jersey licensed psychologist focusing on the areas of concern outlined here by the Commission.

ORDER

The Commission therefore orders that E.F. 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.

E.F. 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 E.F. 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 4TH DAY OF NOVEMBER 2020

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