



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of J.M., Correction  
Officer Recruit (S9988R),  
Department of Corrections

Medical Review Panel

CSC Docket No. 2015-1675

ISSUED: JAN 23 2017

(BS)

J.M., represented by Matthew R. Dempsky, Esq., appeals his rejection as a Correction Officer Recruit candidate by the Department of Corrections and its request to remove his name from the eligible list for Correction Officer Recruit (S9988R) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on August 25, 2015, which rendered the attached report and recommendation on August 25, 2015. Exceptions were filed on behalf of the appellant and cross exceptions were filed by the appointing authority.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Guillermo Gallegos (evaluator on behalf of the appointing authority) carried out a psychological evaluation of the appellant and characterized the appellant as having significant problems with cognitive limitations, where he scored within the mental retardation range on a verbal/abstraction IQ test. In school, the appellant described himself as a "slow learner" who took mostly special education classes. Dr. Gallegos opined that it would take the appellant more time than most others to learn even semi-complex tasks and that he might not be able to react appropriately in novel situations. Dr. Gallegos also noted the appellant's "spotty" work history as indicative of his sense of "dutifulness." As a result, Dr. Gallegos failed to recommend the appellant for employment as a Correction Officer Recruit.

Dr. Jennifer Kelly (evaluator on behalf of the appellant) carried out a psychological evaluation of the appellant and indicated the appellant as having no indications of pathology present. Specifically, Dr. Kelly noted no legal history, no substance abuse history, no aggression history, or mental health treatment/difficulties history. Although Dr. Kelly concluded that the appellant "satisfies the minimum standard for psychological qualification" for employment as a Correction Officer Recruit, she indicated that he would be at a high risk for difficulty with the academic portions of the position and, as such, is at risk for significant problems within the training academy which may not respond to remediation. Dr. Kelly also concluded that the appellant was at risk for future learning and problem solving difficulties if he were to be employed in the position.

The evaluators on behalf of the appellant and the appointing authority reached differing conclusions and recommendations. The Panel concluded that the negative recommendation found support in the appellant's limited work experience and cognitive limitations. The appellant's appearance before the Panel was consistent with Dr. Gallegos' findings. When questioned by the Panel about his responses to various test items, the appellant was unable to articulate the reasons for his responses. For example, he responded to a number of questions pertaining to ethnic and gender issues that "everyone is equal," but his was unable to clarify this response. The same with his response as to women being unsuitable for certain types of jobs. The Panel agreed with Dr. Gallegos' assessment regarding the appellant's problem solving/learning ability. Further, the Panel noted that Dr. Kelly, the appellant's own evaluator, had indicated that his "score on a measure of general problem solving was significantly lower than the identified average value for successful public safety candidates." As a result, the Panel opined that the appellant could have difficulty understanding and retaining new information, preferring instead rote-learned information. In addition, it is likely that the appellant could not generalize learning to new situations and that he would need remediation and close supervision to achieve satisfactory job performance, if the remedial training was successful. Accordingly, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Correction Officer Recruit, justified finding the appellant psychologically unsuitable for employment in the subject position.

In his exceptions, the appellant argues that the Panel relied upon Dr. Gallegos' presentation to the Panel and notes he referred to which were not "turned over" to the appellant. In essence, the appellant claims he had "no notice" of Dr. Gallegos' appearance or of the existence of his notes, or he would have had his own evaluator, Dr. Kelly, at the meeting to present a rebuttal. Further, the appellant challenges the use of the Shipley Institute of Living Scale as a valid measure of the appellant's intellectual capacity. The appellant finds it "laughable" that he scored in the 90<sup>th</sup> percentile on the written test for the subject position and was then found to have

the IQ equivalent of 69 (indicative of mental retardation) on the Shipley. The appellant asserts that "someone allegedly afflicted with 'mental retardation' has succeeded wildly" in passing the civil service examination.<sup>1</sup> The appellant further claims that the appointing authority has failed to sustain its burden of proof since the conclusion of its expert "conflicts with the evidence." The appellant asserts that it is the civil service examination itself which serves as the basis of whether or not a candidate has the requisite knowledge and intellectual capacity to serve in the subject title. Allowing an appointing authority to rely upon a psychological evaluation in this matter "deeply undercuts the purpose and effect" of the civil service examination and individuals with high test scores could be denied employment opportunities based on a "flawed or limited psychological analysis." In support of his arguments, the appellant references *In the Matter of Anastasia Vey*, 124 N.J. 534 (1991) and 135 N.J. 396 (1994) which states in pertinent part that administrative agencies must articulate the standards and principles that govern discretionary decisions in as much detail as possible. In this regard, the appellant argues that no psychological diagnosis was made and a "blanket conclusion" based on his alleged "cognitive limitations" does not constitute a psychological basis for disqualification.

In its cross exceptions, the appointing authority asserts that Dr. Gallegos' conclusion that the appellant "evidenced significant problems with cognitive and poor dutifulness" were echoed in the appellant's own evaluator's report in which Dr. Kelly confirmed that he was "at risk for future learning and problem solving difficulties" if he were to be employed in the subject position. It is the appointing authority's position that a Correction Officer Recruit needs the ability to understand, remember, and carry out oral and written directions and the ability to learn quickly from oral and written explanations and demonstrations. In this regard, the appointing authority argues that the appellant is not a suitable candidate and that the report and recommendation of the Medical Review Panel should be adopted by the Civil Service Commission.

## CONCLUSION

The Class Specification for Correction Officer Recruit is the official job description for such State positions within the civil service system. According to the specification, an 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

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<sup>1</sup> J.M. scored a 90.658 on the subject examination and ranked number 3.048 non-veteran on the resulting eligible roster.

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.

The Civil Service Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and found that the psychological traits which were identified and supported by test procedures and the behavioral record relate adversely to the appellant's ability to effectively perform the duties of the title. The Commission finds that the appellant's exceptions do not persuasively dispute the findings and recommendations of the Panel in this regard. Although the appellant asserts that neither Dr. Gallegos nor the Panel provide a specific psychological disorder or illness and cites Vey, the Commission notes that the appellant's cognitive limitations as described by Dr. Gallegos, Dr. Kelly, and the Panel, coupled with the areas of concern raised in the appointing authority's cross-exceptions, certainly are indicative of traits not conducive to successfully serving as a Correction Officer Recruit. The fact that the appellant was able to successfully pass a multiple choice examination and place on the list for the subject position is but the initial step in the screening process. A viable candidate for the position of Correction Officer Recruit must also possess the cognitive capacity to successfully perform the duties of the position. All of the evaluators in this instance have concluded that the appellant is deficient in that regard.

With regard to the appellant's assertions regarding Dr. Gallegos' use of notes during the Panel meeting, the appellant claims he had "no notice" of Dr. Gallegos' appearance or of the existence of Dr. Gallegos' notes. Had he known, he would have produced his own evaluator, Dr. Kelly, at the meeting to present a rebuttal. In response, the Commission notes that the Panel meeting is not a plenary hearing where testimony is taken, and does not require the presence of the appellant, his or her representative, the appointing authority or its representatives, or the evaluators whose reports are reviewed. Rather, the Panel meeting serves as a vehicle for the members of the Panel to directly question the appellant concerning areas of concern which arise from the Panel's own thorough review of both sets of

evaluations, the test data, and behavioral record prior to rendering its own report and recommendation concerning the psychological suitability of the appellant. It is further noted that the Panel's observations regarding the appellant's appearance before the Panel are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants. Copies of the Panel's report and recommendation are provided to the parties prior to a final decision being issued, and the parties are afforded an opportunity to file exceptions and cross-exceptions to be addressed by the Commission in its Final Administrative Determination. The Commission relies on the expertise of these licensed professionals when deciding the merits of psychological disqualification appeals.

#### ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that J.M. 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 18TH DAY OF JANUARY, 2017



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Attachments

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