



In the Matter of A.B.,
Fire Fighter (M2555M),
North Hudson Fire and Rescue

CSC Docket No. 2016-1544

STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Medical Examiners Panel Appeal

ISSUED JAN 20 2017 (DASV)

A.B. appeals the request by North Hudson Fire and Rescue to remove his name from the Fire Fighter (M2555M) eligible list for medical unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Examiners Panel (Panel) on November 22, 2016, which rendered the attached report and recommendation on November 23, 2016. The appellant was present at the meeting. The appointing authority was not present. No exceptions were filed by the parties.

N.J.A.C. 4A:4-6.5 provides for the Civil Service Commission (Commission) to utilize the expertise of the Panel to make a report and recommendation on medical disqualification issues. The Panel is composed of medical professionals, all of whom are faculty and practitioners of Rutgers New Jersey Medical School.

In this case, the Panel's Chairman, Lawrence D. Budnick, MD, Director of Occupational Medicine Service and Associate Professor of Medicine, Rutgers New Jersey Medical School, requested a medical specialist to perform a chart review and to make findings and recommendations regarding the appellant's medical fitness for the job in question. Based on the evaluation of submitted information and the medical consultant's review, the Panel found, with a reasonable degree of medical certainty, that the appellant did not possess any significant disease, impairment, or functional limitation which would cause a direct threat to himself or others in the position of Fire Fighter. Therefore, it recommended that the appellant be

considered to be physically capable of undergoing the training involved to be a Fire Fighter and to perform the duties associated with the position.

It is noted that the Fire Fighter (M2555M)) eligible list expired on December 20, 2015. The appellant, a veteran, was certified in the 18th position on the certification, along with 74 other eligibles on January 30, 2015. Appointments, including the 75th ranked eligible on the certification, were made effective April 27, 2015.

CONCLUSION

Having considered the record and the Panel's report and recommendation issued thereon and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's report and recommendation that the appellant is medically fit to undergo the training involved to be a Fire Fighter and perform effectively the duties of the position. The Panel set forth that the appellant's medical examination on April 2, 2015 found that his pulmonary function testing was "sub-optimal" and he was "status post cervical fusion surgery." However, the appellant had a normal pulmonary function test on April 30, 2015. Moreover, although the appellant had cervical fusion surgery, the Panel found that he currently works without restrictions and does not take any medications for his neck. Therefore, under these circumstances, the Panel did not find a basis to remove the appellant from the subject eligible list for medical unfitness.

ORDER

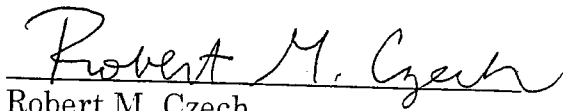
The Commission finds that the appointing authority has not met its burden of proof that A.B. is medically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that his name be restored to and the subject eligible list be revived. Absent any disqualification issues 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. sec. 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 Examinations* (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 successful completion of his working test period, the Commission orders that appellant be granted a retroactive date of appointment to April 27, 2015, 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 the 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



Robert M. Czech
Chairperson
Civil Service Commission

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Attachment

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