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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of R. S.,
Admissions and Records Officer
(C0281T), Essex County

List Removal

CSC Docket No. 2016-3686

ISSUED: SEP 21 2017 (DASV)

R. S. appeals her rejection as an Admissions and Records Officer by Essex County and its request to remove her name from the eligible list for Admissions and Records Officer (C0281T), Essex County, on the basis of a failed medical examination.

By way of background, the appellant appeared on the subject eligible list, which promulgated on February 11, 2016 and does not expire until February 10, 2019. Her name was certified on February 16, 2016. In disposing of the certification, the appointing requested the appellant's removal due to a failed medical examination. The appointing authority submitted a copy of a letter to the appellant, dated March 30, 2016, advising her that she "Failed [the] Pre-Employment Physical and/or Pre-Employment Drug Screening." Additionally, the appointing authority presented a notification from the Employee Health Physician from the Essex County Health Center that the appellant was examined on March 21, 2016 and was "NOT MEDICALLY APPROVED TO BE EMPLOYED BY THE COUNTY OF ESSEX." Thereafter, the appellant's name was removed. It is noted that candidates were appointed from the subject certification effective April 25, 2016.

On appeal to the Civil Service Commission (Commission), the appellant states that she was rejected due to her urine being positive for ascorbic acid (vitamin C). She explains that she had bariatric surgery, and to prevent nutrient and vitamin deficiencies, she had to take multivitamins which contain ascorbic acid. She indicates that she would like to be placed back on the eligible list and considered for

employment because she has stopped taking the multivitamins. In support of her appeal, the appellant submits laboratory results, dated March 21, 2016, and notification from the examining physician, Essex County's Hospital Center Division, dated March 30, 2016, that her urine was positive for ascorbic acid (vitamin C).

It is noted that, considering the documents submitted by the appellant, the appointing authority was specifically asked by letter, dated March 1, 2017, to provide all medical and drug test reports, including background information, which were the basis for the appellant's removal request no later than March 20, 2017. It was advised that the documents submitted to the certification unit did not provide specific information for the Commission to render a decision in the matter. The appointing authority did not respond to the request.

CONCLUSION

N.J.A.C. 4A:4-6.1(a)3 provides that a person may be denied examination eligibility or appointment when he or she is physically or psychologically unfit to perform effectively the duties of the title.

N.J.A.C. 4A:4-6.3(b) provides in examination and selection appeals, the appellant shall have the burden of proof, except for medical and psychological disqualification appeals, where the appointing authority shall have the burden of proof.

N.J.A.C. 4A:4-6.5(g)4 provides that, in appropriate cases, appellants may be referred for an independent professional evaluation. *N.J.A.C. 4A:6.5(a)2* states that the submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. *N.J.A.C. 4A:4-6.5(d)* provides that upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to [this agency], within 20 days, all background information, including any investigations and all complete medical, psychological and/or psychiatric reports which were the basis for the removal request. *N.J.A.C. 4A:4-6.5(f)* provides that professional reports submitted shall include (1) the professional's signature, type of license (including type of license or educational degree of any person contributing to the report), address, and the date; (2) the length of the examination or interview; (3) a specific diagnosis or statement of behavioral pattern or the specific reasons for a recommendation; (4) a finding as to the qualifications of the appellant for effective performance of the duties of the title; and (5) all tests that have been administered (for example, EKG, EEK, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

N.J.A.C. 4A:4-6.5(d)2 provides that any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

N.J.A.C. 4A:4-6.5(g)5 provides that costs and penalties may be assessed against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

In this matter, the appellant indicates that she was rejected for the position due to her urine being positive for ascorbic acid (vitamin C). Although the record reflects a statement from the appointing authority's examining physician that the appellant was not medically approved to be employed, the appointing authority has not submitted any other substantive information, such as the medical evaluation or positive drug test, to show that the appellant is not medically fit for duty or tested positive for an illegal drug. The appointing authority was specifically requested to provide all medical and drug test reports, including background information, which were the basis for the removal request. However, it failed to do so. Therefore, absent any substantive disqualification issues showing that the appellant is medically unfit to effectively perform the duties of an Admissions and Records Officer, there is an insufficient basis to remove her name from the subject eligible list. Accordingly, the Commission finds that the appointing authority has not met its burden of proof in this matter.

Pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C.A. sec. 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. *See also, the Equal Employment Opportunity Commission's ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be "real," the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate's possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information. *See also N.J.A.C.* 4A:4-6.5(b) (An appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment). The Commission notes that the ADA's restrictions on psychological and medical examinations apply regardless of whether an individual has a disability. *See Roe v. Cheyenne Mountain Conference Resort*, 124 F.2d 1221, 1229 (10th Cir. 1997).

Therefore, in subjecting the appellant to a medical examination, her appointment is mandated subject to any adverse updated background information or psychological examination, if necessary, that would disqualify her from further consideration. Additionally, the appellant is entitled to a retroactive appointment date of April 25, 2016, the date that eligibles from the subject certification were appointed, upon successful completion of her working test period.

One final matter warrants comment. The Commission finds that the appointing authority's failure to submit the requested medical documentation in this matter constitutes an unreasonable delay in this review process pursuant to *N.J.A.C. 4A:4-6.5(g)5*. The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2*. See *In the Matter of Fiscal Analyst (M1351H)*, Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989). The appointing authority had been admonished for its unreasonable delay in providing requested medical documentation. In that regard, in *In the Matter of Kiahna Walcott, et al.* (CSC, decided April 5, 2017), the appointing authority subjected County Correction Officer candidates to medical examinations. The examining physicians did not medically approve the appellants for the position due to failed physical fitness tests. The appointing authority was requested to provide medical documentation for review by the Commission, as the Commission found that a physical fitness test does not demonstrate an actual physical condition or defect which would have removed the appellants from the eligible list. However, the appointing authority failed to do so. As such, the Commission concluded that the appointing authority did not meet its burden of proof and granted the appeals of the appellants. Additionally, the Commission warned that any future delays in complying with the referenced timeframes outlined in the decision would result in the appointing authority being subjected to fines. In the present case, the appointing authority once again did not provide adequate medical documentation and has blatantly disregarded the Commission's written request for the information. While the Commission strongly denounces the appointing authority lack of action, it will nonetheless not issue it a fine at this time. Given that the Commission's decision in *Walcott, supra*, was issued after its letter in this case requesting the information, the appointing authority will be provided one last opportunity to revise its practices in order to fully comply with the applicable timeframes and any request for medical and/or psychological disqualification information. If future non-compliance is found, the appointing authority will be subject to a fine.

ORDER

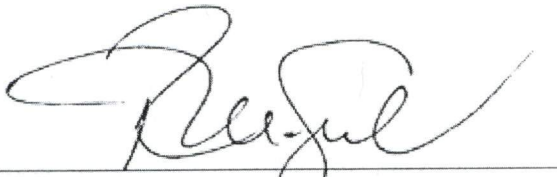
The Commission finds that the appointing authority has not met its burden of proof that R. S. is medically unfit to perform effectively the duties of an Admissions and Records Officer and, therefore, the Commission orders that her name be restored to the Admissions and Records Officer (C0291T), Essex County, eligible list, for retroactive appointment. In that regard, absent any disqualification issues ascertained through an updated background check conducted after a conditional offer of appointment or psychological examination, if necessary, the appellant's appointment is otherwise mandated. See 42 U.S.C.A. sec. 12112(d)(3) and *Equal*

Employment Opportunity Commission's ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations (October 10, 1995).

Since the appointing authority has not supported its burden of proof, upon successful completion of her working test period, the Commission orders that appellant be granted a retroactive date of appointment to April 25, 2016, the date she would have been appointed if her 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 20TH DAY OF SEPTEMBER, 2017



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