



STATE OF NEW JERSEY

CIVIL SERVICE COMMISSION

In the Matter of K.M.D.,
Police Officer (S9999R), Township of
Verona

CSC Docket No. 2016-3102

Medical Review Panel Appeal

ISSUED: April 2, 2018 (BS)

K.M.D., represented by Michael L. Prigoff, Esq., appeals his rejection as a Police Officer candidate by the Township of Verona and its request to remove his name from the eligible list for Police Officer (S9999R), Verona 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 10, 2017, which rendered its report and recommendation on August 22, 2017. Exceptions were filed on behalf of the appointing authority and cross-exceptions on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Matthew Guller (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as working as a field technician for a communications company since September 2015. Due to his relatively low score on the Wonderlic Personnel Test, Dr. Guller administered the Beta III Examination, a non-verbal test of intelligence in which the results were indicative of high intellectual functioning. Dr. Guller noted that the appellant used profanity at a former place of employment when he became involved in a dispute with managers in his role as union Shop Stewart. The appellant was viewed as insubordinate and was placed on "Notice of Discharge." Dr. Guller further noted a number of adverse interactions with law enforcement dating back to 1993 including public urination, dirt bike riding, unregistered ATV, fireworks exploding in his home, and five moving violations. Additionally, he experimented with L.S.D. and marijuana while in high school and had been

suspended from both high school and middle school for "issues including too many detentions and not behaving in class." The appellant reported that he used alcohol three times per week, consuming three to six drinks each occasion. Dr. Guller indicated that the responses given during personality testing showed the appellant to be in "the high risk range for integrity problems, anger management, alcohol use, and substance abuse proclivity." Dr. Guller concluded that the appellant presented with significant areas of concern and did not recommend the appellant for appointment.

Dr. Stephen D. Chece, evaluator on behalf of the appellant, conducted a psychological evaluation and characterized the appellant as currently working as a County Corrections Officer and producing scores indicating that he is of average intelligence. The appellant reported that he was involved in couples' therapy, which helped him improve his relationship. The appellant also reported that he "drinks socially about three times a week, but does not overdo it to the point of intoxication." The appellant admitted to using L.S.D. when he was 15 or 16 and that he had smoked marijuana in the past, the last time when he was 22. The appellant told Dr. Chece that he did not like school and, due to his behavior, was suspended a couple of times. Dr. Chece opined that the appellant had a "quite positive" employment history but that he had resigned from a former place of employment after he "became insubordinate and things escalated." The appellant admitted that he had made a mistake when he engaged in insubordinate behavior at work. With regard to substance abuse proclivity, Dr. Chece noted that the appellant responded to a substance abuse assessment measure in a manner that did not meet the criteria for a substance abuse disorder. Overall, the appellant's test results "suggest no indication of depression, anxiety, or other mental illness, behavioral problems, substance abuse problems, problems with the law" and that his behavior has been "for the most part exemplary at home and at work." Dr. Chece concluded that the appellant was psychologically fit to serve as a Police Officer.

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 possible difficulty with providing clear and accurate information and concerns about his not following established rules of expected conduct. The behavioral record reviewed by the Panel did reveal several areas of concern. However, the vast majority of the behaviors in question occurred fifteen or more years ago. The Panel opined that the appellant's recent behavior as well as his ability to perform the duties of a County Corrections Officer offer a strong indication that he is fit to serve in a law enforcement role at this time. The Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is mentally fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. The Panel

collectively concluded that there were no grounds to remove the appellant from the subject eligible list due to a lack of psychological fitness and that his name should be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by Brian J. Aloia, Esq., argues that its evaluator, Dr. Matthew Guller, is a Board-Certified Police and Public Safety psychologist and that this Board certification is the only certification recognized by the American Psychological Association, requiring extensive training and experience in the specialized field of police and public safety assessment. The appointing authority asserts that Dr. Stephen D. Chece, evaluator on behalf of the appellant, is a generalist with limited experience in police and public safety assessment. The appointing authority has "significant concerns" about appointing a candidate with the appellant's history. In support of its exceptions, the appointing authority submits a detailed rebuttal by Dr. Guller of the appellant's suitability and Dr. Chece's qualifications and evaluation. In his rebuttal, Dr. Guller takes exception to the Panel's findings that "the vast majority of the behaviors in question occurred fifteen or more years ago" and its finding that the appellant's "ability to perform the duties of a corrections officer offer a strong indication that he is not unfit to serve in a law enforcement role at this time." Dr. Guller cites more recent events in the behavioral record and asserts that the appellant has only made it through Essex County's pre-training, mini-probationary period and has yet to attend the Correction Officer Training Academy. Dr. Guller contends that, in making its assessment, the Panel has failed to take into account the "lower risk" corrections environment "which lowers the bar for recommendation standards substantially." The appointing authority requests that the Commission rely on the expertise of Dr. Guller and find the appellant psychologically unsuitable for employment as a Police Officer.

In his cross exceptions, the appellant, represented by Michael L. Prigoff, Esq., argues that the appointing authority's "addendum submission" should not be considered by the Commission because it should have been submitted to the Panel prior to the meeting when it could have been addressed by the appellant before the Panel prior to the Panel making its recommendation. Dr. Chece's report was submitted ten months prior to the Panel meeting and the appointing authority had more than sufficient time to submit new materials for the Panel to consider. The appellant asserts that Dr. Guller's "addendum" presents additional allegations against the appellant, which were not referenced in the original report, thereby preventing the appellant from being able to address them before the Panel. The appellant further argues that the same arguments were made by the appointing authority and Dr. Guller before the Panel, with the exception of new information about disciplinary action by UPS which the appellant specifically denied were disciplinary charges. The appellant also argues that the appointing authority's assertions regarding his alcohol use were addressed and found to be not problematic

by the Panel. Accordingly, the appellant respectfully requests that the Commission accept and adopt the report and recommendation of the Panel.

CONCLUSION

The Civil Service Commission has reviewed the report and recommendation of the Medical Review Panel. 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. 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. Although the appointing authority's exceptions contain criticisms of the credentials and level expertise of the appellant's own psychological evaluator, Dr. Chece, the Commission notes that Dr. Chece is a licensed New Jersey Psychologist as required in *N.J.A.C. 4A:4-6.5(e)*. Further, while Dr. Chece's practice may not focus on exclusively on police and public safety assessment like that of Dr. Guller's, all of relevant information regarding the appellant has been reviewed by the Panel. The Panel's observations regarding the appellant and its conclusions regarding the raw data and reports it reviewed in this matter, are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants for police and public safety positions.

However, in the instant matter, the Commission finds the exceptions presented by the appointing authority to be persuasive. Initially, the Commission notes the appellant passed a psychological evaluation for and had been appointed County Correction Officer. However, the Commission notes that the psychological evaluations for the titles County Correction Officer and Police Officer are not interchangeable and differ in that candidates for Police Officer are held to the highest standard of personal accountability due to their high visibility within the community. Accordingly, being deemed psychologically suitable for appointment to the County Correction Officer title does not guarantee that a candidate would also be deemed psychologically suitable for appointment to the Police Officer title. The Commission further notes that the Panel did not appear to be aware that, although the appellant was appointed County Correction Officer, he had not yet attended the academy but rather had only made it through Essex County's pre-training, mini-probationary period. Consequently, the Panel's opinion regarding the appellant's "ability to perform the duties of a County Corrections Officer offer a strong indication that he is fit to serve in a law enforcement role" is premature at this time.

Accordingly, the Commission finds that questions remain regarding the appellant's proclivity for integrity problems, anger management issues, alcohol and substance abuse and the other issues raised in the appointing authority's

exceptions. Therefore, the Commission finds it necessary to refer this matter for independent evaluation by a New Jersey licensed psychologist. Such an evaluation should address the current psychological suitability of the appellant with regard to issues raised above and in Dr. Guller's rebuttal included in the appointing authority's exceptions.

ORDER

The Civil Service Commission therefore orders that K.M.D. be administered an independent psychological evaluation. The Commission further orders that it is appropriate in this matter to assess the cost incurred for this evaluation to the appointing authority in the amount of \$530. Prior to the Civil Service Commission's reconsideration of this matter, copies of the independent evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

K.M.D. is to contact Dr. Robert Kanen, the Civil Service Commission's independent evaluator, in order to arrange for an appointment within 15 days of receipt of this order. Dr. Kanen's address is as follows:

Dr. Robert Kanen
Kanen Psychological Services
76 West Ridgewood Avenue
Ridgewood, New Jersey 07450
201-670-8072

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF MARCH, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

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and
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Attachments

**c: K.M.D.
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Matthew Cavalla
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