



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of C.M.,
Police Officer (S9999R), Union
Township

CSC Docket No. 2016-3443

Medical Review Panel Appeal

ISSUED: May 24, 2018 (BS)

C.M., represented by Michael L. Prigoff, Esq., appeals her rejection as a Police Officer candidate by the Union Township Police Department and its request to remove her name from the eligible list for Police Officer (S9999R), Township of Union 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 10, 2017. Exceptions were filed on behalf of the appointing authority.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. John Aylward (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant’s greatest liability, in terms of her test performance, as her reasoning skills and below standard verbal ability. Test results also produced a far lower score than average on the Police Aptitude Test and on one of the personality tests. Dr. Aylward indicated that there were no psychological problems that could be described as clinical in nature. The appellant’s most prominent difficulty was in the area of cognitive ability. Dr. Aylward opined that as a Police Officer, the appellant “would be seen as weak” and, therefore, psychologically unfit for the job. Dr. Aylward recommended that the appellant not be hired as a Police Officer.

Dr. Stephen D. Chece, evaluator on behalf of the appellant, conducted a psychological evaluation and characterized the appellant as having intellectual ability in the low average range. Testing revealed that the appellant's general cognitive ability, specifically her verbal comprehension and perceptual reasoning abilities, were both in the low average range. Dr. Chece noted that the appellant seemed to evidence more ability when it came to sustaining attention, concentrate, and exert mental control, which were in the average range. The appellant's greatest strength was her ability to process simple or routine visual material without making errors, which was in the high average range when compared to her peers. Dr. Chece indicated that the tests were not balanced, suggesting that the appellant is quite adept tasks requiring visual motor coordination and her word memory is adequate. The appellant has been employed in the same capacity for the past two years, where her performance is good, and she has been able to handle the demands of the job quite well and takes pride in her work. Dr. Chece opined that the appellant demonstrated commitment, intelligence, and ability which "has enabled her to perform at a high level." Current test results suggest no indication of depression, anxiety, or other mental illness, behavioral problems, substance abuse problems, or problems with the law. The appellant is emotionally intelligent and is able to relate to others. 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 reasoning skills. The appellant is employed as a Medical Assistant in a private medical practice since August 2016 and previously worked at Saint Barnabas Medical Center between 2013 and 2016; there is no record of any performance difficulties while serving in these capacities. Additionally, the appellant's credit history is unremarkable and she pays her bills on time and has no financial difficulties. There is no indication that the appellant has any arrests, restraining orders, substance abuse issues, driver's license suspensions, or other legal difficulties. Although the appellant's cognitive abilities, particularly in perceptual reasoning and verbal comprehension, fall within the low average range, the Panel found the results to still be in range of that which are required to serve to serve as a Police Officer. 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 concluded that there were no grounds to remove the appellant from the subject eligible list due to a lack of psychological fitness and that her name should be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by H. Thomas Clarke, Esq., asserts that verbal ability and comprehension, as well as cognitive reasoning,

are critical areas related to Police work and the Panel failed to address the appellant's deficiencies in these areas in its report and recommendation. In addition, the appellant stated at the Panel meeting that she did not like school and the appointing authority noted that Police Officers often spend time in a classroom setting, such as their time at the Police Academy, and "must be committed to learning about the laws they are sworn to uphold." Further, the appellant scored poorly on personality assessments and police-related instruments but the Panel chose to focus on the fact that she did not have any employment difficulties. The appointing authority argues that the Panel never connected the appellant's employment or presentation at the Panel meeting to the duties of a Police Officer. The appointing authority contends that "verbal abilities have been seen as the best predictor of success for a law enforcement officer." The appointing authority requests that the Commission rely on the expertise of Dr. Aylward and find the appellant psychologically unsuitable for employment as a Police Officer or, as an alternative, order the appellant to submit to an independent psychological examination.

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 and that, 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. In the instant matter, the Commission finds the exceptions presented by the appointing authority not to be persuasive. Although the appointing authority's exceptions emphasize the appellant's lack of verbal abilities, the Panel concluded that the appellant's cognitive abilities, particularly in perceptual reasoning and verbal comprehension, fall within the low average range, but still within the range of that required to serve as a Police Officer. The appointing authority's exceptions aside, all of relevant information regarding the appellant has been reviewed by the Panel, whose 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. Having considered the record and the Medical Review Panel's Report and Recommendation issued thereon, and the exceptions and cross exceptions filed by the parties, and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Review Panel's Report and Recommendation.

ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that C.M. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that her name be restored to the subject eligible list. Absent any disqualification issue 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. §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 Examination* (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 the successful completion of her working test period, the Commission orders that appellant be granted a retroactive date of appointment to the date she 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 or counsel fees, except the relief enumerated above.

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 23RD DAY OF MAY, 2018



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Chairperson, Civil Service Commission

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