



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of T.Q.B., Fire Fighter
(M2554M), Newark

Medical Review Panel Appeal

CSC Docket No. 2017-1565

ISSUED: June 22, 2018 (BS)

T.Q.B., represented by Bette R. Grayson, Esq., appeals his rejection as a Fire Fighter candidate by the City of Newark and its request to remove his name from the eligible list for Fire Fighter (M2554M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on January 26, 2018, which rendered the attached report and recommendation on February 5, 2018. Exceptions were filed on behalf of the appointing authority and cross exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Rachel Safran (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as being arrested twice, once for possession of a weapon (brass knuckles) and once for DUI; as reporting three motor vehicle summonses; and being involved in three motor vehicle accidents. The appellant indicated to Dr. Safran that he consumed alcohol once a week (two or three beers) and he denied any history of mental health treatment or financial difficulties. Dr. Safran noted that test results indicated that there was a high risk that the appellant would be rated as “poorly suited” for employment by psychologists with expertise in public safety screening. Additionally, test results also indicated a high risk for having integrity problems, anger management issues and substance abuse proclivity. Dr. Safran failed to recommend the appellant for appointment to the subject position.

Dr. Chester E. Sigafoos, evaluator on behalf of the appellant, carried out a psychological evaluation and indicated that the appellant reported that he last drank alcohol in 2013 and he had been tested for illegal drug consumption by an employer and a boxing commission. Although the appellant had been previously terminated from a job, Dr. Sigafoos noted that he had been with his current employer for three and one half years. The behavioral record indicated that the appellant was convicted of DUI with a .08 BAC when he was 22 years old and that he had been arrested for possession of a weapon (brass knuckles) which had been downgraded to violation of a city ordinance. The responses provided by the appellant during testing revealed no significant psychological problems. Accordingly, Dr. Sigafoos could find no reason why the appellant was not psychologically fit to serve as a Fire Fighter.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The Panel concluded that the negative recommendation found support in the appellant's two arrests (one for DUI), termination from employment, several motor vehicle violations, and test results indicating that he may not be suitable for employment in law enforcement. The Panel noted that the appellant had been employed with his current employer for four years, apparently without incident. The Panel noted that there was neither a pattern of violence or multiple arrests in the record, and the appellant received his last motor vehicle violation in 2014. It was the consensus of the Panel that there was not a consistent pattern of evidence to suggest that the appellant would not be able to successfully function as a Fire Fighter. The Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Fire Fighter, indicate that the candidate is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. The Panel recommended that the appellant be restored to the eligible list.

In its exceptions, the appointing authority, represented by France Casseus, Esq., submitted a rebuttal to the Panel's Report and Recommendation prepared by Dr. Matthew Guller of the Institute for Forensic Psychology. In his rebuttal, Dr. Guller questions the appellant's credibility with regard to his arrest and DUI and makes the assertion that it is "generally accepted" that a candidate's first psychological examination is the most accurate "since candidates are largely naïve to red flag issues in the process at that point in time." Dr. Guller contends that the appellant was subsequently able to craft his responses in more socially acceptable terms. Dr. Guller further asserts that none of the tests employed by Dr. Sigafoos are "normed" on a public safety population and none have data supporting their predictive validity for the pre-employment screening of public safety personnel. Dr. Guller contends that the appellant's record demonstrates a "classic case of poor judgment" with a life history and test data showing results not suitable for employment in public safety work. Dr. Guller expressed concern about this

appellant being involved in a DUI or other impulsive behavior if he were to be appointed Fire Fighter.

In his cross-exceptions, the appellant argues that neither Mr. Casseus nor Dr. Guller had attended the Panel meeting or they would have heard the appellant's explanations which were accepted by the Panel. The appellant further argues that Dr. Guller failed to explain in his exceptions discrepancies in its testing results which he alleges were in conflict with one another, that would support any finding of validity and accuracy of its findings. On the other hand, the Panel asked "probing questions" on which to base its conclusions and reviewed the behavioral record and all of the test data prior to making its report and recommendation to the Civil Service Commission. The appellant asserts he is qualified and would do well as a Fire Fighter.

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 contain criticisms of the credentials and level expertise of the appellant's own psychological evaluator, Dr. Sigafos, the Commission notes that Dr. Sigafos is a licensed New Jersey Psychologist as required in *N.J.A.C. 4A:4-6.5(e)*. Further, while Dr. Sigafos's practice may not focus 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, 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. Additionally, the Commission is mindful that the appellant's suitability will be further assessed during his working test period by the appointing authority and will ultimately demonstrate whether he has the actual ability to successfully perform the duties of a Fire Fighter.

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.

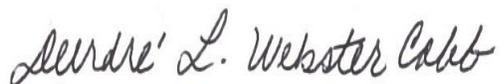
ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that T.Q.B. is psychologically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that his 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 his working test period, the Commission orders that appellant be granted a retroactive date of appointment to 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 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 20TH DAY OF JUNE, 2018



Deirdré L. Webster Cobb
Chairperson, Civil Service Commission

Inquiries
and
Correspondence:

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: T.Q.B.
Bette R. Grayson, Esq.
France Casseus, Esq.
Kelly Glenn