

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2016-1524

Medical Review Panel

ISSUED: JULY 19, 2018 (DASV)

The Psychological Evaluation and Report by Dr. Kanen discusses the evaluation procedure and reviews the previous psychological findings relative to the appellant. In addition to reviewing the reports, letters, recommendations and test data submitted by the previous evaluators, Dr. Kanen administered the following: Clinical Interview/Mental Status Examination, the Inwald Personality Inventory – 2, and the Rorschach Inkblot Test. Dr. Kanen found no evidence that the appellant suffered from a mental illness and the Personality Inventory – 2 was within normal limits. However, Dr. Kanen noted that despite wanting to become a Police Officer since high school, the appellant engaged in underage drinking on a college campus and, as an adult, received a driving under the influence charge which was downgraded to reckless driving. Moreover, Police Officers and Fire Fighters gave the appellant negative evaluations, which related to problems with authority. The appellant had been a volunteer Fire Fighter and was described by a District 1 Fire

Commissioner to be “a ticking bomb” and having made bad decisions. For example, the Fire Commissioner stated that the appellant was sitting in the bed of his pickup truck drinking beer and heckling Fire Fighters as they were fighting a bus fire. Another comment from a Police Officer was that the appellant “questions authority and would make a terrible cop.” Dr. Kanen stated that [t]aking a volunteer position and performing well can be a good predictor of good performance but taking a volunteer position and receiving complaints and concerns from several people can be a good predictor of poor performance.” Dr. Kanen was concerned with the appellant’s ability to use sound reasoning to make good decisions, regulate his emotions under stress, and get along with his co-workers and the community. During the Rorschach Inkblot Test, Dr. Kanen stated that the appellant gave only 10 responses, rejected two cards, and took an exceptionally long time to respond to the cards. There were suggestions of internal stress and concerns about the appellant’s ability to deal with emotion. Therefore, Dr. Kanen concluded that the appellant was psychologically unsuited for employment as a Police Officer.

CONCLUSION

The job specification for Police Officer is the official job description for such municipal positions within the Civil Service system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives and the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

The Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and finds that the psychological traits which were identified and supported by test procedures and the behavioral record relate adversely to the appellant’s ability to effectively perform the duties of the title. Accordingly, having considered the record and the report and recommendation of

the independent evaluator and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusions as contained in the attached Psychological Evaluation and Report of the independent evaluator.

ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that J.S. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be removed from the subject eligible list.

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 18TH DAY OF JULY, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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and
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Attachments

c: J.S.
David J. DeFillippo, Esq.
Jonathan L. Hornik
Louis N. Rainone, Esq.
Kelly Glenn



STATE OF NEW JERSEY

**DECISION OF
CIVIL SERVICE COMMISSION**

In the Matter of J.S.,
Police Officer (S9999R),
Marlboro Township

CSC Docket No. 2016-1524

Medical Review Panel

ISSUED: MARCH 29, 2018 (DASV)

J.S., represented by David J. DeFillippo, Esq., appeals his rejection as a Police Officer candidate by Marlboro Township and its request to remove his name from the eligible list for Police Officer (S9999R) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel (Panel) on August 10, 2017, which rendered the attached report and recommendation. Exceptions were filed on behalf of the appellant, and cross exceptions were filed on behalf of the appointing authority.

The report by the Panel discusses all submitted evaluations. The negative indications related to the appointing authority evaluator's findings are in regard to the appellant's impulse control, disregard for the law, misuse of alcohol, driving record, and lack for remorse for a downgraded driving under the influence charge. Dr. Daniel F. Schievella conducted the psychological evaluation of the appellant on behalf of the appointing authority. In his December 16, 2014 report, Dr. Schievella concluded that the appellant was not psychologically suitable to be employed as a Police Officer. It is noted that Dr. Schievella administered several tests on the appellant. However, the data and testing materials were lost. The appellant's evaluator, Dr. Ralph Fretz, conducted a psychological evaluation on the appellant and found that the appellant was a low risk candidate who was psychologically fit to carry out the duties of a Police Officer. In his report dated October 1, 2016, Dr. Fretz opined that "the original report without a review of Dr. Schievella's database

is deemed in the professional judgment of this psychologist to be insufficient to support the categorization of [the appellant] as ‘psychologically unfit’ to perform the duties of a [P]olice [O]fficer.” Upon review, the Panel indicated that although “Dr. Schievella is responsible for keeping the files and data on individuals he evaluates, what is not accurate is that Dr. Fretz was unable to complete his own evaluation of the candidate without the raw data Dr. Schievella admittedly lost.” Moreover, the Panel could not ignore the subsequent information presented by Dr. Schievella, which questioned the appellant’s psychological suitability for the position sought. In that regard, in a letter dated May 13, 2016, Dr. Schievella stated that the “preponderance of material resulting in the subject’s disqualification was based largely on his background history, as well as his demeanor during the interview.” In addition, he stated that the Marlboro Police Department re-investigated the appellant regarding the “anecdotal reports” that he was intoxicated responding to fire calls. The appellant had been a volunteer Fire Fighter with the Marlboro Volunteer Fire Department. For instance, on March 13, 2015, a patrolman stated that the appellant “questions authority and would make a terrible cop.” The patrolman indicated that the appellant was on a fire truck with alcohol on his breath. Moreover, on March 11, 2015, a District 1 Fire Commissioner said, “if you hire [the appellant], you will be in trouble. He is a ticking time bomb . . . [The appellant] doesn’t like to be told what to do and has a problem with authority.” The Fire Commissioner further indicates that the appellant makes “bad decisions” and in 2014, during a bus fire on Route 79, the appellant was sitting in his pickup truck drinking beer and heckling the Fire Fighters while they were fighting the fire. Therefore, considering the length of time since the pre-appointment evaluation was conducted in December 2014, the information provided by Dr. Schievella in his May 13, 2016 letter, and Dr. Fretz’s evaluation, the Panel recommended that the appellant undergo an independent evaluation. It also requested that the independent evaluator be provided with the background investigation of the appellant, the independent evaluator gather collateral information from individuals noted in the documents, and Dr. Schievella and Dr. Fretz submit all their raw data and reports to the independent evaluator.

In his exceptions, the appellant emphasizes that Dr. Schievella failed to produce materials as mandated by *N.J.A.C. 4A:4-6.5(d)*. He argues that failure to produce such materials prejudiced his ability to refute the conclusion that he was not suited for appointment as a Police Officer. Moreover, while the appellant agrees that Dr. Schievella’s report is outdated, he maintains that there is sufficient evidence in the record, such as Dr. Fretz’s report, testing protocols, and letters of recommendation, which demonstrate that he is qualified for appointment. Regarding Dr. Schievella’s May 13, 2016 letter, the appellant contends that the information contained therein is “nothing more tha[n] hearsay character assassination.” The appellant states that he refuted this information during the Panel meeting and has submitted favorable reference letters regarding his tenure as a volunteer Fire Fighter. Thus, the appellant maintains that it is unnecessary to

refer him for an independent evaluation, and the Commission should instead grant his appeal.

In its cross exceptions, the appointing authority, represented by Louis N. Rainone, Esq., states that it supports the Panel's recommendation for the appellant to undergo an independent evaluation. It notes, however, that the Police Officer (S9999R), Marlboro Township, eligible list is now expired. In that regard, the eligible list expired on March 22, 2017.

CONCLUSION

Initially, the appellant argues that the failure to produce the testing materials from the pre-appointment evaluation prejudiced his ability to refute the conclusion that he was not suited for appointment as a Police Officer. *N.J.A.C. 4A:4-6.5(f)* states, in pertinent part, that professional reports submitted by either of the parties shall include the following:

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.

While the appellant's psychologist is entitled to review the raw data and protocols of the tests administered by the appointing authority's evaluator, it does not render the initial evaluation invalid. As indicated by Dr. Schievella, the appellant's disqualification was based largely on his background history and his demeanor during the interview. Moreover, Dr. Schievella's written report sets forth the results of the specific psychological tests. The appellant's psychologist had sufficient information to rebut the conclusion of Dr. Schievella. Dr. Fretz could have also administered the same tests to challenge the findings of Dr. Schievella. As indicated by the Panel, Dr. Fretz still had the ability to complete his own evaluation of the appellant without the raw data Dr. Schievella admittedly lost. Thus, the appellant's arguments in that regard are unpersuasive.

Moreover, contrary to the appellant's contention, there is not sufficient evidence in the record at this time to consider him psychologically suitable for appointment. In that regard, the job specification for Police Officer lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring. Thus, it is

clear that a Police Officer must have the ability to follow rules. Additionally, Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Although the appellant contends that he has refuted the negative information during the Panel meeting and has submitted favorable reference letters regarding his tenure as a volunteer Fire Fighter, the information presented by the appointing authority raises serious concerns regarding his psychological suitability for the position. Therefore, the Commission agrees with the Panel and accepts its report and recommendation that the appellant undergo an independent evaluation. As for the appointing authority's concern, the Commission has the ability to revive the Police Officer (S9999R), Marlboro Township, eligible list and restore the appellant for appointment. *See N.J.A.C. 4A:4-3.4*. In addition, the Commission notes that its staff will provide the independent evaluator with the information that has been submitted to the Panel, which includes the reports and any raw data compiled in this appeal. However, should the independent evaluator find it necessary to gather additional information, the parties should fully cooperate in the request.

ORDER

The Commission therefore orders that J.S. be administered an independent psychological evaluation. The Commission further orders that the cost incurred for this evaluation be assessed to the appointing authority in the amount of \$530. Prior to the 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.

J.S. is to contact Dr. Robert Kanen, the Commission's independent evaluator, within 15 days of the issuance of this determination in order to arrange for an appointment. 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 J.S. does not contact Dr. Kanen within the time period noted above, the entire matter will be referred to the Commission for final administrative determination and the appellants lack of pursuit will be noted.

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



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Acting Chairperson
Civil Service Commission

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Attachment

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