



In the Matter of S.D.,
County Correction Officer (S9999U),
Essex County

STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2019-457

Medical Review Panel

ISSUED: NOVEMBER 20, 2019 (DASV)

S.D., represented by Bette R. Grayson, Esq., appeals his rejection as a County Correction Officer¹ candidate by Essex County and its request to remove his name from the eligible list for County Correction Officer (S9999U) on the basis of psychological unfitness to perform effectively the duties of the position.²

This appeal was brought before the Medical Review Panel (Panel) on July 10, 2019, which rendered a report and recommendation. Exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations and his presentation at the Panel meeting. Dr. Guillermo Gallegos, the evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant on March 14, 2018 and found that the appellant evidenced “emotional dysregulation and poor stress tolerance.” In that regard, Dr. Gallegos indicated that the appellant served in the U.S. Marine Corps. and had been deployed to Afghanistan for six months in 2009 and 2010. The appellant reported mental health symptoms to the Veterans Administration (VA), for which he receives a disability payment of 50% for posttraumatic stress disorder (PTSD) and 10% for anxiety, and an additional payment for other physical and cognitive disabilities. Specifically, Dr. Gallegos indicated that the appellant’s VA records (Progress Notes), dated January 5, 2018,

¹ The title of County Correction Officer will be renamed County Correctional Police Officer effective December 1, 2019.

² It is noted that the appellant’s name was certified on December 12, 2017 from the subject eligible list. Had the appellant’s name not been removed, his appointment would have been effective April 7, 2018.

revealed that the appellant suffers from “significant occupational and social impairments as well as flashbacks, nightmares and other sleep disturbances, occasional intense or prolonged psychological distress, persistent negative emotional state, irritability, hypervigilance and problems with concentration. He is often anxious and depressed and his judgment is considered impaired.” Dr. Gallegos concluded that if the appellant were hired as a County Correction Officer, “he would be a great risk for potential re-triggering of his PTSD.” Therefore, based on these concerns, Dr. Gallegos did not recommend the appellant for the position. It is noted that the January 5, 2018 Progress Notes were submitted to the Panel, which indicated that the following symptoms had been deemed “actively” applying to the appellant: depressive mood, anxiety, panic attacks that occur weekly or less often, chronic sleep impairment, flattened affect, and impaired judgment.

The appellant submitted an independent psychological report by Dr. Chester E. Sigafos. Dr. Sigafos evaluated the appellant on November 2, 2018 and did not find that the appellant suffered from “significant psychopathological conditions.” Rather, Dr. Sigafos found the appellant to be a suitable candidate for the County Correction Officer position, stating that the appellant displayed an “adaptive capacity to think logically and coherently.” With regard to the appellant’s diagnosis of PTSD, Dr. Sigafos noted in his report that the appellant’s denial of experiencing trauma while serving in Afghanistan “is questionable.” However, the test administered to the appellant specific to trauma did not support any trauma related diagnosis.

As set forth above, the evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. During the Panel meeting, the appellant confirmed that he was no longer receiving disability compensation for a traumatic brain injury, but that his disability for PTSD was still active. However, the appellant denied that he was depressed or had been experiencing flashbacks. Moreover, the Panel questioned the appellant regarding a reference in the VA records that the appellant was verbally aggressive at work. The appellant explained that in his current position, he sometime had to be “loud, but it was appropriate for the circumstances.” It is noted that the appellant works for a concrete company and has been employed there since August 2015. Additionally, the Panel questioned the appellant on certain critical items regarding anxiety and avoiding things that brought back bad memories. The appellant explained that he felt anxious or tense when he was rushing. For the latter question, the appellant responded that he was thinking about previous relationships. In summation, the appellant denied having a PTSD disability, but he had not returned to the VA to address the issue. He stated that he attempted to call the VA, but it is difficult to do so at work and that he is not technologically oriented to submit an on-line application.

In addition to the PTSD disability designation, the Panel reviewed the appellant’s behavioral record, including a 2007 termination from a bank due to a

money shortage. However, the Panel noted that there was no police investigation or other evidence of similar behavior. The Panel also did not find the appellant's 2011 legal issues regarding a trespassing summons as evidence of a problematic behavioral pattern. However, what it found to be of most concern was the appellant's continued receipt of disability compensation from the military for PTSD for which he claims he no longer had. The Panel concluded that a PTSD disability does not necessarily preclude the appellant from work; however, "disability due to PTSD would be, in [the Panel's] opinion, likely to be a psychological barrier to work as a County Correction Officer." While the appellant stated that he no longer suffers from PTSD symptoms, and the Panel did not see evidence of active PTSD in his recent history or his presentation at the Panel meeting, the appellant had not been conscientious in his efforts to address this with the VA. The Panel stated the appellant could have returned to the VA to be re-evaluated for the presence of PTSD. However, he had not, and the Panel concluded that this lack of conscientiousness deems the appellant psychologically unsuited to perform the duties of a County Correction Officer. Accordingly, the Panel recommended that the appellant be removed from the subject eligible list.

It is noted that after the Panel meeting but prior to the Panel's issuance of its report, the appellant wrote to the U.S. Department of Veterans Affairs on July 11, 2019 requesting a termination of his PTSD disability designation. He stated that he "[f]or sufficient time, [he has] neither felt nor suffered from the symptoms that led to [his] being diagnosed with [PTSD]." However, he noted that he has still not been able to acquire computer or internet skills and has been reliant on his wife in that regard.

In his exceptions to the Civil Service Commission (Commission), the appellant underscores that the Panel found no current signs of PTSD and that its biggest concern was an alleged lack of conscientiousness. However, he maintains that the issue has been remedied as he has written to the VA to terminate his receipt of disability payments. In support, he submits an August 6, 2019 email from the VA, acknowledging receipt of his "claim to remove contention from [his] award" and informing him to "allow up to 5 business days for 'RO' to respond" via mail or phone call. The appellant also submits a completed Decision Review Request: Supplemental Claim form to terminate compensation for his PTSD disability decision which the appellant dated as "1/2017." It is noted that the appellant submits no further information to the Commission as to the result of this request. Lastly, the appellant states, that as an Afghanistan veteran, he should not be punished and urges the Commission not to adopt the Panel's recommendation. He maintains that serving as a County Correction Officer and being able to go home and eat regular food "is nowhere near as stressful nor as challenging as being employed in a combat zone."

CONCLUSION

The Commission has reviewed the report and recommendation of the Panel, and having made an independent evaluation of the record, adopts the Panel's recommendation to remove the appellant's name from the County Correction Officer (S9999U) eligible list, Essex County.

The Job Specification for the title of County Correction Officer is the official job description for such positions within the Civil Service system. According to the specification, officers are responsible for the presence and conduct of inmates as well as their safety, security and welfare. An officer must be able to cope with crisis situations and to react properly, to follow orders explicitly, to write concise and accurate reports, and to empathize with persons of different backgrounds. Examples of work include: observing inmates in a variety of situations to detect violations of institutional regulations; escorting or transporting individual and groups of inmates within and outside of the institution; describing incidents of misbehavior in a concise, factual manner; following established policies, regulations and procedures; keeping continual track of the number of inmates in his or her charge; and performing regular checks of security hazards such as broken pipes or windows, locks that were tampered with, unlocked doors, etc.

At issue is the appellants' diagnosis of PTSD and whether his failure to inform the VA of his condition adversely relate to the duties and responsibilities of a County Correction Officer which would psychologically disqualify him from the position. It is undisputed that upon Dr. Gallegos' evaluation of the appellant in March 2018, the appellant's PTSD diagnosis by the VA remained. He had been diagnosed in January 2018 to have depressive mood, anxiety, panic attacks that occur weekly or less often, chronic sleep impairment, flattened affect, and impaired judgment. While the appellant self-reports that he no longer has symptoms of PTSD and has requested termination of disability payments, he has not demonstrated that the PTSD diagnosis has been lifted. However, regardless of whether the diagnosis is lifted in 2019, it is clear that at the time of the appellant's consideration for appointment, he was found to have suffered from such a condition. The appellant's name was certified on December 12, 2017 from the subject eligible list and the appellant's VA evaluation was on January 5, 2018. The appellant would have been appointed on April 7, 2018. At that time, Dr. Gallegos found that the appellant was receiving the disability compensation for PTSD and that "he would be a great risk for potential re-triggering of his PTSD." Thus, given this behavioral record, Dr. Gallegos concluded that the appellant evidenced "emotional dysregulation and poor stress tolerance" and could not be recommended for appointment.

The Commission agrees and emphasizes that the appellant must be psychologically suited for the position at the time he is considered for appointment.

Having anxiety, panic attacks, chronic sleep impairment, and impaired judgement adversely relate to the duties of a County Correction Officer, which includes coping with crisis situations and reacting properly in a correctional facility setting. Moreover, while a County Correction Officer must be conscientious in the work he or she performs, the Commission need not make a determination as to whether the appellant was conscientious in his efforts to advise the VA of his improved condition. As noted above, given the timing of the pre-appointment psychological evaluation of the appellant, the issue of when the appellant was to inform the VA is not controlling as to whether he was psychologically suited at that time.

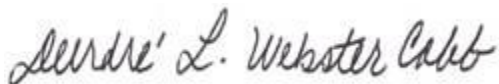
Therefore, under these circumstances, the Commission finds that the negative recommendation of Dr. Gallegos that the appellant's behavioral record evidenced "emotional dysregulation and poor stress tolerance" is supported in the record and does not find the appellant's challenge to the report nor his exceptions to the Panel's recommendation sufficiently persuasive to restore his name to the subject eligible list. Accordingly, for the reasons set forth above, the Commission cannot grant the appellant's appeal.

ORDER

The Commission finds that the appointing authority has met its burden of proof that S.D. is psychologically unfit to perform effectively the duties of a County Correction 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 19TH DAY OF NOVEMBER, 2019



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