

regarding its minimum visual acuity requirement. In that regard, it was noted that the New Jersey DOC Medical Standards for Corrections Trainees and Parole Officer Recruits (Medical Standards) require that a corrections trainee's "visual acuity must be no less than 20/100, uncorrected to 20/30 corrected both eyes." However, DOC in response to the appeal indicated that the standard was "visual acuity must be correctable to 20/30 and may not exceed 20/100 uncorrectable, per eye."

Upon its review of the medical documentation, the Panel found that the appellant's May 15, 2018 preplacement medical examination revealed that he had a history of right eye refractive amblyopia with decreased visual acuity since birth. An examination by the appointing authority's physician revealed near and far visual acuity of the appellant's right eye of 20/100 with correction, and for both eyes, a near visual acuity of 20/25 and a far visual acuity of 20/22 with correction. However, an eye exam on May 26, 2018 by the appellant's personal optometrist revealed right eye vision of 20/50 with correction and 20/200 without correction. Moreover, for both eyes together, the examination found the appellant's visual acuity to be 20/20 with correction and 20/25 without correction. It is noted that the appellant's optometrist indicated that the appellant "can use left eye to perform firearms duties." Thus, given this information, the Panel determined that if the Medical Standards are for both eyes, then the appellant should be considered physically capable of undergoing training and performing the essential functions of a Correctional Police Officer. However, if each eye must meet the vision requirement, then the Panel concluded that the appellant's significant right visual impairment renders him medically unqualified for the position.

It is noted that the parties were requested to clarify the record as indicated in the Panel's report. In response, the appellant states that the optometrist he saw on May 26, 2018 was not his regular doctor. In support of his appeal, he submits a note, dated February 24, 2019, from his regular optometrist, who the appellant states has known him since he was young. This optometrist indicates that the appellant has "20/30 Best Corrected Vision in his Right eye and 20/20 in his left eye."

In reply, DOC acknowledges that it erroneously indicated that the Medical Standards pertain to "each eye." It submits that the Medical Standards state that "visual acuity must be no less than 20/100, uncorrected to 20/30 corrected both eyes" used together. However, it relies on its physician that the appellant has decreased visual acuity in his right eye which is below what is required.² Moreover, it argues that based on the recommendation of the appellant's optometrist that it can be reasonably inferred that the use of the appellant's right eye is not recommended in the performance of his job duties. DOC further asserts that the appellant has not

² In a letter to the appointing authority, its physician appears to interpret "both eyes" to mean both eyes taken individually as the physician specifically states that because the appellant's "best corrected right eye vision is below that which is required, he does not meet the visual standard set forth by the NJDOC."

submitted medical clearance or a comprehensive vision evaluation which not only advises of the best corrected vision but explains any limitations. It submits that that visual acuity and sharp observation are required on the job, as well as passing a firearm qualification test yearly. Thus, the appellant is not qualified for the position.

CONCLUSION

There is no dispute that that the appellant has a significant right visual impairment of his right eye. DOC clarifies that visual acuity must be correctable to 20/30 in both eyes used together. As set forth in the job specification, a Correctional Police Officer is responsible for the appropriate care and custody of inmates, which would include patrolling assigned areas and assuring that contraband articles are not concealed on the bodies of the inmates or in any part of the institution. Additionally, an incumbent must make note of suspicious persons and conditions and observe everything significant that takes place within sight and hearing of his or her post. The foregoing responsibilities clearly demonstrate that visual acuity is essential to perform the duties of a Correction Officer Recruit. Having a visual acuity of at least 20/30 is thus a reasonable standard.

In the instant matter, the appellant's eyes were examined on at least three occasions for the subject position. The following were found regarding his right eye with correction: near and far visual acuity of 20/100; 20/50; and 20/30. For both eyes with correction, the appellant was found to have visual acuity of 20/25 (near) and 20/22 (far), and in his first examination with a personal optometrist, he was found to have visual acuity of 20/20. As noted above, DOC clarifies that the Medical Standards of 20/30 pertain to both eyes used together and not "each eye" which then means that visual acuity must be 20/30 *when measuring both eyes together*. Thus, based on its review, the Panel indicated that if the Medical Standards referred to both eyes, then the appellant met the minimum requirement and he should be considered physically capable of undergoing training and performing the essential functions of a Correctional Police Officer.

Therefore, having considered the record and the Panel's report and recommendation issued thereon and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's report and recommendation and finds that the appointing authority has not presented sufficient justification for the removal of the appellant's name from the subject eligible list. Accordingly, the Commission grants the appellant's appeal.

As a final comment, since the language of the Medical Standards is not clear, it is recommended that DOC take steps to clarify the wording as it pertains to visual acuity so that there is no confusion that the reference to "must be no less than

20/100, uncorrected to 20/30 corrected both eyes” means both eyes measured together and not both eyes used individually.

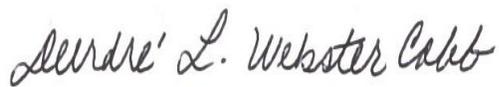
ORDER

The Commission finds that the appointing authority has not met its burden of proof that D.S. is medically unfit to perform effectively the duties of a Correctional Police Officer and, therefore, the Commission orders that the appellant’s name be restored to the subject eligible list. Absent any disqualification issues 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.* sec. 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 Examinations* (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 successful completion of his working test period, the Commission orders that appellant be granted a retroactive date of appointment to November 15, 2018, 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, except the relief enumerated above.

This is the final administrative determination in the matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF MAY, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: D.S.
Veronica Tingle
Kelly Glenn