



	:	<b>STATE OF NEW JERSEY</b>
	:	
	:	<b>FINAL ADMINISTRATIVE</b>
In the Matter of R.H., Parole Officer	:	<b>ACTION</b>
Recruit (S1000U), State Parole Board	:	<b>OF THE</b>
	:	<b>CIVIL SERVICE COMMISSION</b>
	:	
CSC Docket No. 2018-2893	:	

Medical Review Panel Appeal

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 : **ISSUED: May 16, 2019 (BS)**  
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R.H., represented by Robert K. Chewning, Esq., appeals his rejection as a Parole Officer Recruit candidate by the State Parole Board and its request to remove his name from the eligible list for Parole Officer Recruit (S1000U) 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 16, 2019, which rendered its report and recommendation on January 16, 2019. Exceptions were filed by the appointing authority and cross-exceptions were filed on behalf of the appellant.

The evaluators on behalf of the appellant and the appointing authority reached differing conclusions and recommendations. Dr. Robert Rekker (evaluator on behalf of the appointing authority) conducted a psychological evaluation and characterized the appellant as providing responses indicating that he was a high risk for being rated as being a “poorly suited” candidate which made him more likely to have job performance problems, integrity issues, anger management problems, and alcohol use concerns and substance use proclivity. Dr. Rekker did not recommend the appellant for employment as a Parole Officer Recruit.

Dr. Francesca Peckman (evaluator on behalf of the appellant) conducted a psychological evaluation of the appellant and characterized him as maturing significantly since his underage skirmishes with the law. Dr. Peckman notes that the appellant received several awards while serving in the military and has maintained steady employment since his discharge. It was Dr. Peckman's clinical opinion that the appellant would succeed and should be given the opportunity to prove himself.

The report by the Medical Review Panel discusses all submitted evaluations. The Panel concluded that the primary concerns centered on the appellant's history of two arrests, a termination from employment, test results that indicated possible problems as a law enforcement employee, and possible overuse of alcohol. The appellant answered all of the questions posed to him by the Panel. No evidence of a pattern of employment problems was presented to the Panel. The Panel found no evidence of alcohol abuse. After reviewing all of the concerns raised in the evaluation completed on behalf of the appointing authority, the Panel did not find evidence of a current pattern, behavior, or psychological functioning which would render the appellant an unsuitable candidate for the subject position. The Panel collectively determined that the results of the evaluations completed, along with the appellant's presentation during the meeting and his behavioral record did not support a conclusion that he was psychologically unfit to serve as a Parole Officer Recruit. Taking into account the evaluations of Drs. Rekker and Peckman, and the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Parole Officer Recruit, indicate that the applicant 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 candidate be restored to the eligible list.

In its exceptions, the appointing authority argues that the psychological record "speaks for itself" in that the appellant showed significant problems including poor integrity, poor judgment, and substance misuse. Test data revealed the appellant was "poorly suited" for employment in law enforcement work. The appointing authority argues that, based on *In the Matter of Anastasia Vey*, 124 N.J. 534 (1991) and 135 N.J. 396 (1994), an employer must establish the characteristics being examined or measured, then establish how each characteristic or trait being measured is important to the position, and finally, demonstrate by professionally acceptable measures that the selection device predicts or correlates with the work characteristic or trait. The appointing authority contends that Parole Officers carry guns while on duty and that the risk factors it identified in the appellant such as poor judgment, anger management issues and antisocial behavior render the appellant unsuitable for employment in the subject position. The appointing authority summarizes the appellant's behavioral record and asserts that the Panel failed to fully contemplate the effect of these behaviors. The appointing authority was critical of Dr. Peckman's evaluation and argued that Dr. Peckman failed to

provide test data and characterized her analysis as “vague.” The appointing authority states that it relies on the Institute for Forensic Psychology (IFP) because it specializes in evaluating candidates for positions in law enforcement. The appointing authority contends that the test data supports a finding that the appellant shows characteristics that would be detrimental to his successfully performing the duties of a Parole Officer recruit. The appointing authority respectfully requests that the Civil Service Commission (Commission) reject the report and recommendation of the Panel and find the appellant psychologically unsuitable for the subject position.

In his cross-exceptions, the appellant argues that the Panel properly concluded that the appointing authority failed to provide sufficient evidence to sustain the appellant’s removal. The appellant notes that the burden of proof in this matter rests with the appointing authority. *See N.J.A.C. 4A:4-6.3(b)*. The appellant contends that the appointing authority failed to adequately dispute the Panel’s findings of fact, present facts that the Panel failed to consider, or present any new facts that should be considered. The appellant disputes the appointing authority’s assertion that the Panel lacked any raw data from Dr. Peckman and argues that Dr. Peckman’s report, raw data, and test results were included in his appeal submission. The appellant also summarizes his behavioral record and argues that, although the appointing authority had knowledge of the alleged negative incidents in the behavioral record, they failed to seek the appellant’s removal prior to extending the conditional offer of employment. The appellant respectfully requests that the Commission find that the appointing authority failed to sustain its burden of proof, affirm the Panel’s report and recommendation, and restore the appellant’s name to the subject eligible list.

## CONCLUSION

The 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. In this regard, the Commission notes that its Panel of qualified and licensed psychologists and psychiatrist have already reviewed the raw test data, reports and opinions of Drs. Rekker and Peckman, and rendered its own expert opinion in this matter. The Commission defers to and agrees with the expert opinion of its Panel which, contrary to the appointing authority’s reliance on *Vey*, failed to identify any pervasive characteristic or trait which would render the appellant psychologically unsuitable for the subject

position. The Commission finds nothing in the appellant's behavioral record that is so egregious it would warrant his removal from consideration from serving in the subject title and notes that the appointing authority could have requested the appellant's removal prior to extending the conditional offer of employment had it found any incidents in the appellant's behavioral record it concluded rose to the level of removal. Further, the Commission is mindful that any potential behavioral or performance issues regarding the appellant's employment can be addressed during the working test period.

Therefore, having considered the record and the Panel's Report and Recommendation issued thereon, and having made an independent evaluation of same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's Report and Recommendation.

### **ORDER**

The Civil Service Commission finds that the appointing authority has not met its burden of proof that R.H. is psychologically unfit to perform effectively the duties of a Parole Officer Recruit 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 January 20, 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 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 9TH DAY OF MAY, 2019

*Deirdre L. Webster Cobb*

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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

c: R.H.  
Robert K. Chewning, Esq.  
Jacqueline Jobes  
Kelly Glenn