



STATE OF NEW JERSEY

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

In the Matter of C.C.-J., Correctional
Police Officer (S9988U), Department
of Corrections

CSC Docket No. 2018-2016

Medical Review Panel

ISSUED: AUGUST 2, 2019 (DASV)

C.C.-J., represented by Robert L. Utsey, Jr., Esq., appeals her rejection as a Correctional Police Officer¹ candidate by the Department of Corrections and its request to remove her name from the eligible list for Correctional Police Officer (S9988U) 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 November 29, 2018, which rendered a report and recommendation. Specifically, the report by the Panel discusses all submitted evaluations and the information obtained from the meeting. The primary concerns of the appointing authority’s psychological evaluator, Dr. Guillermo Gallegos, dealt with the appellant’s previous places of employment, which included a termination as a residential coordinator in January 2017 for “overtime misuse,” falsifying medication records, and “theft by unlawful taking” when the appellant allegedly refused to reconcile funds in the presence of her supervisor. It is noted that there was a criminal complaint for “theft by unlawful taking” which was dismissed. The appellant reported that her former employer did not appear in court. Additionally, the appellant was issued a written warning at her former place of employment which was also later dismissed. Moreover, the appellant was suspended for six weeks in 2010 at another place of employment as a result of “hurting a female resident juvenile while restraining her.” According to the appellant, this charge was dismissed and she received back

¹ Pursuant to *N.J.S.A.* 11A:2-11.1, effective May 1, 2018, the title of Correction Officer Recruit has been retitled to Correctional Police Officer.

pay. Furthermore, there were accusations of assault by the appellant's ex-husband and contact with child services in 2006 with no charges being filed. The appellant's license was also suspended in 2009 for unpaid parking tickets. Based on the foregoing, Dr. Gallegos found that the appellant "evidenced significant problems including poor dutifulness, poor integrity, poor judgment and impulse dyscontrol" and did not recommend the appellant for appointment as a Correctional Police Officer. However, in support of her appeal, the appellant submitted an independent psychiatric evaluation conducted by Dr. Thomas D'Amato. Dr. D'Amato determined that the appellant was psychiatrically stable for the position sought and cleared her for duty. He opined that the appellant has qualities of being "an excellent" Correctional Police Officer given that she worked with disadvantaged young adults and worked in group homes. Moreover, Dr. D'Amato indicated that the appellant had reported that she resolved the issues with her former employer by going to court to "clear up the matter." In addition, Dr. D'Amato stated that the appellant was previously found psychologically suited for a position as a County Correction Officer with Hudson County. It is noted that agency records reveal that the appellant was appointed as a County Correction Officer with Hudson County, effective August 21, 2015, and resigned in good standing effective September 15, 2015.

The Panel reviewed these evaluations and questioned the appellant during the Panel meeting regarding her previous employment. In particular regarding the accusation of mismanaging client funds, the appellant stated that she often purchased money orders for her clients and retained receipts of the money order purchases. The appellant further indicated that she handed the book of receipts to her supervisor and was never previously asked to reconcile the accounts. However, the Panel indicated that it was not clear what the actual evidence was against the appellant relating to this incident and that it would be helpful to obtain the police report in reviewing the matter. Thus, the Panel determined that in order to accurately assess the appellant's work behavior, the police report relating to accusations made against her by her former employers must be reviewed. Therefore, the Panel recommended that the appellant be referred to an independent evaluator, who shall have access to the police reports relating to the charges against the appellant by her former employers, for an assessment and review of such charges to determine the appellant's psychological suitability for the position sought.

Thereafter, the parties were provided with the Panel's report and recommendation and given the opportunity to file exceptions and cross exceptions. No exceptions were filed. The parties were then requested to provide any and all police reports and the background investigation report concerning the criminal complaints filed by the appellant's former employers. The appellant responded with a Master Incident Report from the Town of Secaucus, describing the allegations of theft of client funds.

Additionally, it is noted that the record consists of a court document that the “theft by unlawful taking – movable prop[erty] val[ed] less than \$200” was dismissed with prejudice for 60 days. Moreover, the appellant had submitted a Decision of the Appeal Tribunal regarding a claim for unemployment benefits. The appellant’s former employer appealed a determination that the appellant was eligible for benefits. The Appeal Tribunal determined that no disqualification for benefits existed as there was insufficient and unreliable evidence that the appellant was discharged for misconduct connected with the work. It is further noted that the Department of Corrections’ background report of the appellant, signed by supervisory officers on October 17, 2017, concluded that:

[b]ased on the information available at this time, this candidate is being recommended to continue to the next phase in the hiring process. There is derogatory information at this time however that would not preclude this candidate from moving forward in the hiring process.

The report includes information regarding the “theft by unlawful taking” charge and the suspension of the appellant’s driver’s license.

CONCLUSION

The Civil Service Commission (Commission) has reviewed the report and recommendation of the Panel, and having made an independent evaluation of the record, the Commission does not find it necessary for the appellant to be referred for independent evaluation.

The Job Specification for Correctional Police Officer is the official job description for such State positions within the Civil Service system. According to the specification, a Correctional Police Officer exercises full police powers and acts as a peace officer at all times for the detection, apprehension, arrest, and conviction of offenders against the law. Additionally, a Correctional Police Officer is involved in providing appropriate care and custody of a designated group of inmates. These officers must strictly follow rules, regulations, policies and other operational procedures of that institution. Examples of work include: encouraging inmates toward complete social rehabilitation; patrolling assigned areas and reporting unusual incidents immediately; preventing disturbances and escapes; maintaining discipline in areas where there are groups of inmates; ensuring that institution equipment is maintained and kept clean; inspecting all places of possible egress by inmates; finding weapons on inmates or grounds; noting suspicious persons and conditions and taking appropriate actions; and performing investigations and preparing detailed and cohesive reports.

The specification notes the following as required skills and abilities needed to perform the job: the ability to understand, remember and carry out oral and

written directions and to learn quickly from written and verbal explanations; the ability to analyze custodial problems, organize work and develop effective work methods; the ability to recognize significant conditions and take proper actions in accordance with prescribed rules; the ability to perform repetitive work without loss of equanimity, patience or courtesy; the ability to remain calm and decisive in emergency situations and to retain emotional stability; the ability to give clear, accurate and explicit directions; and the ability to prepare clear, accurate and informative reports of significant conditions and actions taken.

In the instant matter, the Commission is persuaded by the report and recommendation of Dr. D'Amato, who determined that the appellant was psychiatrically stable and possessed qualities to become "an excellent" Correctional Police Officer. Dr. D'Amato noted that the appellant had resolved her issues with her former employer and previously was given a psychological examination for a correction officer position. The documentary evidence confirms that statement, and agency records indicate that the appellant was employed as a County Correction Officer in 2015. Additionally, while Dr. Gallegos finds psychological concerns regarding the appellant's background, especially her employment history, it is emphasized that the appointing authority had the opportunity to request the removal of the appellant's name from the subject eligible list based on its background investigation of the appellant prior to subjecting her to a psychological examination. The appellant's employment history, license suspension, and domestic issues are not a basis for her removal at this juncture. *See In the Matter of K.W.* (CSC, decided June 20, 2018) (The Commission found that an undisclosed citation against the appellant did not rise to the level of rendering the appellant psychologically unfit to serve as a Correction Officer Recruit, particularly since the appointing authority had the opportunity to request the removal of the appellant's name from the list based on its background investigation, prior to subjecting him to a psychological examination). Further, the Commission is mindful that any potential work performance or behavioral issues can be addressed during a Correctional Police Officer's working test period.

Therefore, the Commission does not accept the Panel's recommendation to refer the appellant for an independent evaluation. Rather, the Commission finds that the record supports the appellant's restoration to the Correctional Police Officer (S9988U), Department of Corrections, eligible list and orders that her appeal be granted.

ORDER

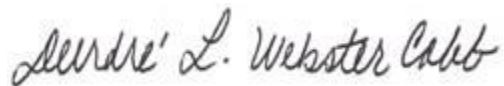
The Commission finds that the appointing authority has not met its burden of proof that C.C.-J. is psychologically unfit to perform effectively the duties of a Correctional Police Officer and, therefore, the Commission orders that the appellant's name be restored to the subject eligible list. Absent any disqualification

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 her working test period, the Commission orders that the appellant be granted a retroactive date of appointment to June 26, 2018, the date she would have been appointed if her 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 31ST DAY OF JULY, 2019



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