



STATE OF NEW JERSEY

| | | |
|-------------------------------------|---|------------------------------------|
| | : | |
| | : | FINAL ADMINISTRATIVE ACTION |
| | : | OF THE |
| In the Matter of B.B., Fire Fighter | : | CIVIL SERVICE COMMISSION |
| (M1557T), North Hudson Fire and | : | |
| Rescue | : | |
| | : | |
| CSC Docket No. 2020-142 | : | |
| | : | |
| | : | Medical Review Panel Appeal |
| | : | |

ISSUED: OCTOBER 23, 2020 (BS)

B.B., represented by Michael L. Prigoff, Esq., appeals his rejection as a Fire Fighter candidate by North Hudson Fire and Rescue and its request to remove his name from the eligible list for Fire Fighter (M1557T) 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 31, 2020, which rendered its report and recommendation on February 2, 2020. Exceptions were filed on behalf of the appointing authority and cross exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Matthew Guller (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as evidencing significant problems with judgment, integrity, and alcohol misuse. Dr. Guller noted that the appellant was arrested for DWI in 2014 in an incident which involved a hit and run, fleeing the scene of an accident, refusing to take the breathalyzer test, and being belligerent to the arresting officers. In addition, the appellant was also terminated from a job because of this incident. Dr. Guller further noted that the appellant had a harassment complaint filed against him by his daughter's mother and that he had previously gone through six weeks at the Jersey City Fire Academy before failing a Firefighter I examination. With regard to the psychological testing, the appellant produced scores which showed he had difficulties

in the area of problem solving, and that he also scored high on antisocial activities, impulsivity, and poor life management scales. Dr. Guller failed to recommend the appellant for appointment to the subject position.

Dr. Chester E. Sigafos, evaluator on behalf of the appellant, carried out a psychological evaluation and characterized the appellant as someone who had the capacity to think logically and coherently. Dr. Sigafos noted that, although the appellant had problems with alcohol when he was younger, current testing was interpreted as consistent with a low probability of having a substance disorder. Other testing was consistent with a lack of indications of clinically significant problems with somatization, cognition, or emotional, thought, behavioral, or interpersonal dysfunction. Dr. Sigafos concluded that the appellant presented with no significant psychological conditions. Accordingly, Dr. Sigafos could find no reason why the appellant was not psychologically fit to serve as a Fire Fighter.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. Dr. Guller expressed concerns about the appellant's 2014 DUI and alcohol use, a harassment complaint filed against the appellant as a child, his cognitive functioning, and his failure to pass the written test at the academy. Dr. Sigafos did not have concerns about the appellant's cognitive functioning, saw the DUI as an isolated incident, and did not find any evidence of other psychopathology. The Panel noted that the DUI was a serious incident involving an accident, leaving the scene, and acting belligerently to the arresting officers. However, the incident occurred over five years ago and there is no other evidence in the appellant's behavioral history of excessive consumption of alcohol. Additionally, there have been other episodes of aggression whether sober or intoxicated. With regard to cognition, the Panel noted that while the appellant scored on the low average range of the testing instrument, the appellant's score was still within the average range. Dr. Sigafos did not have any concerns regarding the appellant's cognitive abilities and noted that he was able to earn an undergraduate degree. The Panel found that the appellant has maintained a stable work history as an adult. The one termination was the result of the appellant's DUI and no other performance issues. The Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Fire Fighter, indicate that the candidate 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 appellant be reinstated to the eligible list.

In its exceptions, the appointing authority, represented by Philip W. Lamparello, Esq., submits a letter from Dr. Matthew Guller, Managing Partner at the Institute for Forensic Psychology, the appointing authority's evaluating service, as rebuttal to the findings of the Medical Review Panel. Dr. Guller expressed concerns about the recidivism rate for DUIs, apparently 36% nationwide, and this issue should be taken seriously when evaluating candidates for positions in public safety. Dr. Guller opined

that individuals convicted of DUI suggests a disregard for rules and regulation and a poor safety consciousness, as well as presenting as a serious risk for future DUI or other alcohol related arrests. Dr. Guller reiterated the findings of Dr. Sigafos and concluded that the appellant was deceptive and had a proclivity for future substance abuse.

In his cross-exceptions, the appellant argues that the appointing authority, via Dr. Guller's rebuttal, raises issues already considered and rejected by the Medical Review Panel. Additionally, Dr. Guller raises some issues that are irrelevant to the appellant. Further, while all of the parties acknowledge that the 2014 DUI was a serious incident involving belligerence toward police, an accident, and the leaving the scene of an accident, the Medical Review Panel concluded that the incident occurred more than five years ago and that there was no other evidence of the appellant's behavioral history in the interim which would suggest excessive consumption of alcohol. Accordingly, the appellant asserts he is qualified and would do well as a Fire Fighter and should be reinstated into the process as recommended by the Panel.

CONCLUSION

The Civil Service 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. Guller and Schlosser, and rendered its own expert opinion in this matter. The Commission defers to and agrees with the expert opinion of its Panel. Although Dr. Guller and IFP technically are not a party to this appeal, and it is not improper for an appointing authority to seek the advice and input of its evaluator when filing its exceptions, the Commission emphasizes that the responsibility to prepare and file exceptions rests solely with the appointing authority or its authorized legal representative. Additionally, the Commission is mindful that the appellant's suitability will be further assessed during his working test period by the appointing authority and will ultimately demonstrate whether he has the actual ability to successfully perform the duties of a Fire Fighter.

Having considered the record and the Medical Review Panel's Report and Recommendation issued thereon, and the exceptions and cross exceptions filed by the

parties, and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Review Panel's Report and Recommendation.

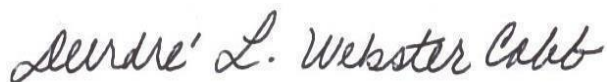
ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that B.B. is psychologically unfit to perform effectively the duties of a Fire Fighter 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 March 13, 2019, 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 21ST DAY OF OCTOBER 2020



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: B.B.
Michael L. Prigoff, Esq.
Philip W. Lamparello, Esq.
Kelly Glenn