



STATE OF NEW JERSEY

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

In the Matter of A.D. and B.B.,
Correctional Police Officer (S9999U
and S9988V)

CSC Docket Nos. 2019-3388 and 2019-
3748

List Removal Appeals

ISSUED: JULY 2, 2020 (DASV)

A.D. and B.B. appeal the request by the Department of Corrections (DOC) to remove their names from the Correctional Police Officer¹ (S9999U and S9988V) eligible list for medical unfitness to perform effectively the duties of the position. These matters have been consolidated due to similar issues.

By way of background, A.D. and B.B., nonveterans, took the open competitive examination for Correctional Police Officer (S9999U and S9988V), achieved a passing score, and were ranked on the subsequent lists. It is noted that the resulting lists promulgated on March 29, 2017 and September 28, 2017 and expired on May 1, 2020 and September 27, 2019, respectively. The appellants' names were certified by the DOC. In disposing of the certifications, the DOC removed the appellants' names because they failed their pre-appointment visual medical examinations. Specifically, DOC informed A.D. and B.B. that the failure was because A.D. had a "[v]isual acuity in the right eye [of] 20/70 corrected,²" and B.B. had a "[v]isual acuity [in the] left eye [of] 20/40."

On appeal to the Civil Service Commission (Commission), A.D. submits a letter from her personal optometrist, indicating that her "eye health and prescription does not prevent her ability to participate in a heavy exercise training program with no restrictions or limitations. Vision was found to be 20/100 right and 20/20 left uncorrected and 20/70 right and 20/20 left corrected."

¹ The Correctional Police Officer title was formerly known as Correction Officer Recruit.

² The DOC issued A.D. a corrected decision which noted that she had failed due to a 20/70 "corrected" measurement from an "uncorrected" measurement in the right eye.

On appeal, B.B. indicates that the 20/40 vision in her left eye was measured without her glasses. She states that she has received a new prescription, and if permitted to re-take the visual medical examination with her glasses, she will meet the DOC's 20/30 vision requirement. In support, she submits the results of her eye examination and notes from her personal optometrist.

In response, the DOC wishes to stand by its original determinations that the appellants are not medically qualified. In A.D.'s case, it indicates that DOC's medical standards for visual acuity cannot exceed 20/30 correctable and 20/100 uncorrectable for "both eyes" and A.D. had a measurement of 20/70 corrected in her right eye. With regard to B.B., it indicates that her visual acuity in her left eye was 20/40 with correction and the medical standards mandate that visual acuity must be correctable to 20/30 and may not exceed 20/100 uncorrectable, "per eye." The DOC further maintains that visual acuity and sharp observation are required to effectively perform the duties of a Correctional Police Officer. In support of its position, it submits documentation relating to the appellants' pre-appointment visual medical examinations.

It is noted that, in a previous case, the Commission recommended that the DOC take steps to clarify the wording of its medical standards so that there would be no confusion interpreting the visual acuity requirements. Specifically, in *In the Matter of D.S.* (CSC, decided May 22, 2019), the DOC removed D.S. from the Correctional Police Officer (S9988V) eligible list, as it asserted that he did not meet the visual acuity requirements for the position. On appeal, the appellant's case was referred to the Medical Examiner's Panel (Panel), which found that the appellant had a significant visual impairment of his right eye. However, the Panel determined that clarification was needed from the DOC regarding its minimum visual acuity requirements. In that regard, the New Jersey DOC Medical Standards for Corrections Trainees and Parole Officer Recruits required that a corrections trainee's "visual acuity must be no less than 20/100, uncorrected to 20/30 corrected both eyes." In response to the appeal, the DOC had indicated that the standard was "visual acuity must be correctable to 20/30 and may not exceed 20/100 uncorrectable, per eye." Thus, 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 rendered him medically unqualified for the position. In response to the Panel's request for clarification, the DOC indicated that visual acuity must be correctable to 20/30 in both eyes used together. Based on the recommendation of the Panel, the appellant thus met the minimum requirement since 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. Accordingly, the Commission granted the appellant's appeal.

In the instant matter, the record reveals that in A.D.'s pre-appointment visual medical examination, for both eyes (far) uncorrected, she had a vision of 20/25 and for both eyes (near) corrected, her visual acuity was also 20/25. In B.B.'s case, DOC's evaluation revealed that for both eyes (far) uncorrected, she had a vision of 20/20 and for both eyes (near) corrected, her visual acuity was also 20/20. Additionally, the information that B.B. presents with her appeal reveals that, upon testing, both eyes together measured a visual acuity of 20/20.

CONCLUSION

In a prior matter, DOC had clarified 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, A.D.'s pre-appointment visual medical examination revealed that she has a visual acuity of 20/25 for both eyes. B.B. has a visual acuity of 20/20 for both eyes, which was also confirmed by her personal optometrist. Given these test results and the medical standards that the DOC specifically clarified in a prior matter, the Commission finds that the appellants meet the minimum visual requirement of 20/30 for both eyes and they should be considered physically capable of performing the essential functions of a Correctional Police Officer.

Therefore, the Commission finds that the appointing authority has not presented sufficient justification for the removal of the appellants' names from their respective eligible list. Accordingly, the Commission grants the appellants' appeals. The Commission also reiterates its prior recommendation. The language of the medical standards is not clear and the DOC should clarify the wording as it pertains to visual acuity so 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.

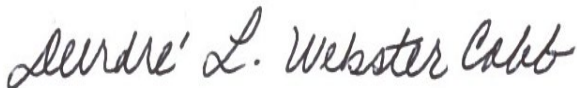
ORDER

The Commission finds that the appointing authority has not met its burden of proof that **A.D.** and **B.B.** are medically unfit to perform effectively the duties of a Correctional Police Officer and, therefore, the Commission orders that the subject eligible lists be revived and the appellants' names be restored to their respective eligible list. Absent any disqualification issues ascertained through an updated background check conducted after a conditional offer of appointment, the appellants' appointments are 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 their working test period, the Commission orders that the appellants be granted a retroactive date of appointment to the date they would have been appointed if their names had not been removed from their respective 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 1ST DAY OF JULY, 2020



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