



STATE OF NEW JERSEY

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

In the Matter of F.E.,
Police Officer (S9999U), Jersey City

CSC Docket No. 2019-3087

Medical Review Panel Appeal

ISSUED: SEPTEMBER 7, 2020 (BS)

F.E., represented by Corey M. Sargeant, Esq., appeals his rejection as a Police Officer candidate by the Jersey City Police Department and its request to remove his name from the eligible list for Police Officer (S9999U), Jersey City on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on November 20, 2019, which rendered its report and recommendation on November 21, 2019. Exceptions were filed on behalf of the appellant and cross exceptions were filed on behalf of the appointing authority.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Guillermo Gallegos (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and noted that the appellant presented with significant problems with judgment and substance misuse. Dr. Gallegos characterized the appellant as being a “high risk” candidate in that the test data revealed a propensity for having integrity problems, anger management problems, and substance abuse proclivity. Individuals with elevated scores in these areas usually reflect a history of illegal acts, authority problems, lack of empathy, instability, and excitement seeking behavior, as well as someone who may use alcohol on a fairly regular basis and experience adverse consequences as a result. These test results found support in the appellant’s behavioral record which included underage drinking, DUI, mouthing off to police officers, and urinating in public, all of which occurred in the two year period prior to Dr. Gallegos’ evaluation. Dr. Gallegos opined that it would be unlikely that the appellant could overcome his sense of entitlement or his tendency to self-indulge in

such a short period of time. Since the appellant never held a job, Dr. Gallegos concluded that there was no behavioral evidence that the appellant could handle the rigors of full time employment, let alone the stress associated with being a full time Police Officer. Dr. Gallegos further noted that the appellant self-reported getting nervous under pressure, which reflected the presence of possibly emotional dysregulation. As a result, Dr. Gallegos failed to recommend the appellant for appointment to the subject position.

Dr. Thomas D'Amato (evaluator on behalf of the appellant) carried out a psychiatric evaluation and opined that the appellant had no psychological, psychiatric, or observable emotional disturbances. Dr. D'Amato noted that the appellant presented as a motivated, honest, cooperative, and well-rounded individual. The appellant had no learning disabilities or any paranoia or delusions. Dr. D'Amato opined that the appellant had the mental ability, maturity, and honesty to serve as a Police Officer and found no significant psychological or psychiatric reason to disqualify him.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The appointing authority's evaluator was concerned about problems with the appellant's judgment, substance use, negative encounters with the police, and psychological testing results while the appellant's evaluator cited the appellant's lack of diagnoses and mental status examination findings. The Panel was concerned about the alcohol related disorderly persons offense and his minimizing the fact that he was pulled over while engaged in underage drinking. The Panel opined that his behavior during this incident was consistent with his responses to critical test items which indicated how he might respond to the behavior of others. Accordingly, the Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is psychologically unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld. The Panel recommended that the appellant be removed from the eligible list.

In his exceptions, the appellant argued that the Panel focused on one incident in its report and the interpretation of this incident was "subjective" and would require the Police Officers involved to be subpoenaed to clarify what occurred during his disorderly person's arrest. The appellant cited *N.J.A.C. 4A:4-4.7*, the standard by which a candidate may be removed from a list when he or she has a criminal record that relates adversely to the employment sought. The appellant presented numerous case examples where the seriousness of the crime was raised to the level of removal. The appellant contends that "wrongful suspicion charge for driving under the influence" did not rise to the level of removal. Further, the appellant successfully completed PTI (Pre-Trial Intervention), 40 hours community service and a fine, which may be used as a sign of rehabilitation and that the Panel

failed to consider this. The appellant argued that further rehabilitation was taken of his own volition in that he now only drinks three times per week, and only having one or two beers at a time, which falls well within the “drinking in moderation standard” set by the CDC. In support of his candidacy, the appellant provided numerous references, to both Dr. Gallegos and the Panel. With regard to the appellant’s lack of employment history, the appellant asserts that he was responsible for the care of a disabled person, which is a “careful, diligent occupation that requires patience, caring, education, and time.” The Panel failed to take this into account. Finally, the appellant disagreed with Dr. Gallegos’ and the Panel’s interpretation of some of his responses to the test items. In conclusion, the appellant argued that the Panel’s report and recommendation failed to analyze and apply the standard set forth in *N.J.A.C. 4A:4-4.7* consistent with prior case law. Accordingly, the appellant should be reinstated to the subject eligible list.

In its cross exceptions, the appointing authority, represented by James B. Johnson, Assistant Corporation Counsel, indicated that it shared Dr. Gallegos’ and the Panel’s concerns over the appellant’s misuse of alcohol, lack of candor, disregard of the law, conflicts with police, and anger management issues suggestive of road rage. The appointing authority contended that Police Officers are held to a higher standard of personal accountability and, accordingly, are required to exercise tact, restraint, and good judgment when dealing with others. *See In the Matter of Santos, Police Officer (S9999M), City of Jersey City* (CSC Docket No. 2013-3205; December 18, 2013). *See also Township of Moorestown v. Armstrong*, 89 *N.J. Super.* 560, 566 (App. Div. 1965). The appointing authority argued that the appellant’s alcohol related incidents and underage drinking coupled with the accompanying legal consequences show an applicant who has not met the high standard expected of Police Officers. Although the appellant asserted in his exceptions that the reason for his disqualification was his prior clashes with the law, the appointing authority pointed out that the reason for the appellant’s disqualification was that he failed the psychological evaluation. The appointing authority argued that the appellant failed the psychological evaluation due to legitimate concerns regarding his judgment, negative encounters with the police, anger management issues, lack of candor, alcohol issues among other. The appointing authority respectfully request that the Commission adopt the findings of its Panel.

CONCLUSION

The Job Specification for the title, Police Officer, is the official job description for such municipal positions within the Civil Service system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take

the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives, the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

The Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and finds legitimate concerns were raised by the appointing authority's evaluator concerning the appellant's poor judgment, substance misuse issues substance use, negative encounters with the police, and psychological testing results which support the recommendation of the Panel. The Commission is not persuaded by the appellant's exceptions which focus primarily on his violations and caselaw regarding *N.J.A.C. 4A:4-4.7*, the standard by which a candidate may be removed from a list when he or she has a criminal record that relates adversely to the employment sought, which is irrelevant to his disqualification. The Commission notes that the appellant was disqualified because he failed the psychological evaluation in that the appellant's behavioral record and responses to test items were indicative a "high risk" candidate who demonstrated a pattern of acts of bad judgment. Of further concern to the Commission was the appellant's apparent lack of a formal employment history which did not allow for the evaluation of the appellant's behavior when engaged and interacting with others in a formal work environment. Additionally, the Commission finds the appellant's assertion that the Panel's interpretation of "one incident" in its report was somehow "subjective" and required the Police Officers involved to be subpoenaed to clarify what occurred during his disorderly person's arrest to be irrelevant. The Commission notes that, prior to making its report and recommendation, the Panel conducts an independent review of all of the raw data presented by the parties as well as the raw data and recommendations and conclusions drawn by the various evaluators prior to rendering its own conclusions and recommendations, which are based firmly on the totality of the record presented to it and, as such, are not "subjective." The Panel's observations regarding the appellant's behavioral record, employment history or lack thereof, responses to the various assessment tools, and appearance before the Panel are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants. The Commission finds the record,

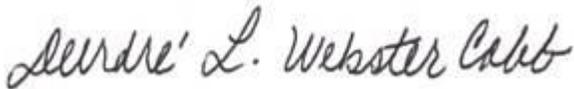
when viewed in its entirety, supports the findings of the Panel and the appointing authority's evaluator of problematic behaviors, poor judgment and substance misuse. Accordingly, the Commission is not comfortable in ratifying the appellant's psychological fitness to serve as a Police Officer.

ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that F.E. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be removed from the subject eligible list.

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 2ND DAY OF SEPTEMBER 2020



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