



In the Matter of D.B., County  
Correctional Police Officer (S9999U),  
Essex County

CSC Docket No. 2020-552

: **STATE OF NEW JERSEY**  
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: **FINAL ADMINISTRATIVE ACTION**  
: **OF THE**  
: **CIVIL SERVICE COMMISSION**  
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: **Medical Review Panel Appeal**  
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**ISSUED: OCTOBER 2, 2020 (DASV)**

D.B., represented by Robert K. Chewning, Esq., appeals his rejection as a County Correctional Police Officer<sup>1</sup> candidate by Essex County and its request to remove his name from the eligible list for County Correctional Police Officer (S9999U) 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 March 11, 2020, which rendered a report and recommendation. Exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations. Dr. Rachel Safran (evaluator on behalf of the appointing authority) carried out a psychological evaluation of the appellant on June 13, 2019 and characterized the appellant as having problems with judgment, impulse control, and substance misuse, as evidenced by his legal history and motor vehicle infractions. Dr. Safran indicated that the appellant had been arrested twice in the two years prior to the evaluation, which included a bench warrant for his arrest in 2017 and a Driving Under the Influence (DUI) charge in 2018. The appellant also had summonses for disturbing the peace and failure to disperse in 2013 and 2014, respectively. Moreover, Dr. Safran expressed concern about the appellant’s continued consumption of alcohol. She noted

<sup>1</sup> The subject title was previously known as County Correction Officer. It was renamed to County Correctional Police Officer effective December 1, 2019.

that the appellant gave inconsistent information on the amount of alcohol he currently consumed. Additionally, Dr. Safran administered various tests on the appellant, including the Candidate & Officer Personnel Survey – Revised (COPS-R), which demonstrated, among other things, that the appellant was at “the high risk level for having potential issues with Relation with Public;” “low in Social Adjustment;” “high in Substance Abuse;” and “high on the Content Awareness scale” which suggests that the appellant “lacks the attention to detail appropriate for a public safety candidate.” Therefore, based on the concerns noted in her report, as well as the psychological testing, Dr. Safran concluded that the appellant was not psychologically suited for employment as a County Correctional Police Officer.

Dr. Gerard A. Figurelli<sup>2</sup> (evaluator on behalf of the appellant) carried out a psychological evaluation of the appellant and opined that the appellant was psychologically suitable for employment as a County Correctional Police Officer. Dr. Figurelli indicated that the appellant had not been “experiencing a diagnosable psychiatric illness” or “presenting with evidence of a diagnosable personality disorder.” Additionally, Dr. Figurelli found that the appellant had “no history of a diagnosable substance use disorder which would render him unfit or unsuitable” for the position sought. Furthermore, the appellant reported to Dr. Figurelli that he has a valid driver’s license but that he could not recall if his license was previously suspended for failure “to pay insurance or registration.” In addition, the appellant informed Dr. Figurelli that his bench warrant was due to his failure to appear in court, which he was unaware that he was required to do so since he “was never actually issued a summons by the officer who stopped him.” Upon review of the “data available,” Dr. Figurelli concluded that the appellant was psychologically fit for duty as a County Correctional Police Officer.

The evaluators on behalf of the appointing authority and the appellant reached differing conclusions and recommendations. The negative recommendation related to the appellant’s poor judgment, impulse control, and substance misuse. The Panel in its report also noted problems with the appellant’s integrity and “his lack of insight regarding repercussions due to alcohol.” At the Panel meeting, the Panel questioned the appellant on his employment and arrest history. The appellant explained that the bench warrant was for not having car insurance and driving without insurance, but he asserted that the Police Officer who stopped him did not issue him a ticket. His second arrest involved the DUI, which eventually resulted in a reckless driving charge and a license suspension for three months. Of particular concern expressed by the Panel was the appellant’s alcohol and substance use as the psychological reports contained differing information. At the meeting, the appellant admitted to using marijuana once and that he continues to drink alcohol. With regard to the latter, the appellant stated that he does not “usually” drive after he drinks, which the

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<sup>2</sup> The appellant also submitted a psychological evaluation from Dr. Martin Friedmutter, a New York licensed psychologist. However, *N.J.A.C. 4A:4-6.5(e)* allows an appellant to submit a report from a New Jersey licensed physician, psychologist, or psychiatrist of his or her own choosing.

Panel interpreted to mean that “under certain circumstances, he continues to drive after drinking, although arrested fairly recently” for a DUI for alcohol. The Panel also noted that it appeared that the appellant did not want to be questioned regarding his arrests and alcohol use. Based on the foregoing, the Panel found that the appellant’s presentation before the Panel was consistent with Dr. Safran’s assessment. Thus, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the job specification for County Correctional Police Officer, indicated that the appellant was psychologically unfit to perform effectively the duties of the position sought, and therefore, it determined that the action of the hiring authority should be upheld. Accordingly, the Panel recommended that the applicant be removed from the subject eligible list.

In his exceptions, the appellant asserts that the Panel made factually inaccurate conclusions by misinterpreting the facts of the appellant’s two arrests and his alcohol and substance use. Additionally, the appellant contends that the Panel failed to consider material facts that weigh in his favor. In that regard, the appellant maintains that he consistently reported his one-time use of marijuana to the Panel and to Drs. Safran and Figurelli. The appellant highlights that, in Dr. Safran’s report, it was noted that he used marijuana once at the age of 16 or 17. In Dr. Figurelli’s report, it was noted that the appellant had a “brief history” of experimental use of marijuana at the age of 17. Thus, the appellant argues that there was no reasonable basis for the Panel to interpret that he provided differing versions of his substance use history to find that he has poor integrity. As for his alcohol use, the appellant contends that the pre-employment psychological forms that he completed did not allow for him to accurately reflect his typical monthly alcohol consumption. Moreover, the two main psychological evaluations were conducted seven months apart and the slight difference in reporting was based on the alcohol consumption at the particular time. The appellant maintains that it was not an attempt to misrepresent his alcohol use. Furthermore, he submits that his statement that he “usually” does not drive after he drinks alcohol should not be taken alone as evidence of poor judgment. The appellant argues that the Panel failed to ask “basic questions” regarding under what circumstances the appellant would drive after drinking, such as how many drinks he has had and how long did he wait after drinking to drive.

In addition, the appellant emphasizes that the Panel failed to consider the following material facts: he is in a stable relationship with his wife; he was found to be “friendly, cooperative and candid” and “calm, compliant, and congenial” during his interviews; he has no discipline in his employment or military history; he has served in the Army National Guard and received an Honorable Discharge with no disability compensation; he has no history of mental health issues; he has never been in a drug or alcohol treatment program; and he has not had serious financial problems.

The appellant also argues that the appointing authority failed to meet its burden of proof to establish the validity of Dr. Safran’s evaluation as her recommendation

contradicts the actual test results. In that regard, the appellant underscores that in the COPS-R test, he was also found to be at low risk in all categories relating to issues of honesty, integrity, judgment, rules compliance, and impulsivity. Furthermore, the appellant notes that the appointing authority was fully aware of his arrests, which has been resolved with fines and penalties. He nonetheless was administered a psychological examination, and thus, given a conditional offer of employment. In support of his appeal, the appellant submits a certification, stating among other things, that he takes responsibility for his actions and that he realizes that he made a mistake that could have hurt himself and others. If there is a possibility that he will have more than two drinks on an occasion, he will not drive and instead use a ride sharing service. However, on a rare occasion when he takes his wife and/or family out to dinner where he may have one or two alcoholic beverages, he makes sure he stops drinking 30 minutes to an hour before driving. The appellant also submits letters of recommendation from a Sergeant with the New Jersey Army National Guard and from his former squad leader who is a Correctional Police Officer with the Department of Corrections. Therefore, the appellant urges the Civil Service Commission (Commission) to find that he is psychologically suited for the position of County Correctional Police Officer and restore him to the subject eligible list. Alternatively, he requests that he be referred for an independent psychological evaluation or that he be granted a hearing at the Office of Administrative Law (OAL) as he maintains that there is a clear dispute of material fact regarding his psychological suitability for the position sought.

It is noted that, despite the opportunity, the appointing authority did not file a reply.

## CONCLUSION

Initially, as an alternative, the appellant requests a hearing at the OAL or a referral to the Commission's independent psychological evaluator. In this regard, *N.J.A.C. 4A:4-6.5(g)* states in pertinent part that the Commission can either conduct a written record review or submit a psychological appeal to the Panel. The Commission shall review the appeal, including the written report and exceptions, if any, and render a final written decision. *See N.J.A.C. 4A:4-6.5(h)*. Hearings are granted only in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978). The facts surrounding the appellant's arrests are a matter of record and the appellant had the opportunity to be present at the Panel meeting. Moreover, while *N.J.A.C. 4A:4-6.5(g)*<sup>4</sup> provides the Commission with the option to refer an appellant for an independent professional evaluation in appropriate cases, the Commission is satisfied that the psychological suitability of the appellant for a County Correctional Police Officer position has been thoroughly

reviewed by the Panel and finds no basis to refer the appellant for an independent evaluation. In this regard, the Commission notes that 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. The Panel's observations regarding the appellant's behavioral history, 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. As such, the appellant's request for a hearing or independent evaluation is denied.

Regarding the merits of the appellant's appeal, it is noted that the job specification for the title of County Correctional Police Officer is the official job description for such positions within the Civil Service system. According to the specification, officers are responsible for the presence and conduct of inmates as well as their safety, security and welfare. An officer must be able to cope with crisis situations and to react properly, to follow orders explicitly, to write concise and accurate reports, and to empathize with persons of different backgrounds. Examples of work include observing inmates in a variety of situations to detect violations of institutional regulations; escorting or transporting individual and groups of inmates within and outside of the institution; describing incidents of misbehavior in a concise, factual manner; following established policies, regulations and procedures; keeping continual track of the number of inmates in his or her charge; and performing regular checks of security hazards such as broken pipes or windows, locks that were tampered with, unlocked doors, etc.

The Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and finds that the negative psychological traits which were identified are supported by test procedures and the behavioral record and such traits relate adversely to the appellant's ability to effectively perform the duties of the title. The Commission finds that the appellant's exceptions do not persuasively dispute the findings and recommendations of the Panel. The Panel's concerns centered on the appellant's poor judgment, impulse control, and integrity with regard to his DUI, continued alcohol use, and his presentation before the Panel. Despite having his license suspended, the appellant admits that he still drives after drinking and the reports indicate that he gave inconsistent information on his alcohol consumption although he attempts to provide reasons for doing so. Further, while he argues that the Panel did not ask "basic" questions on his alcohol use, he does not persuasively rebut the Panel's expert opinion that he lacks insight. As noted by the Panel, it did not appear that the appellant wanted to be questioned regarding his behavioral record in that regard. With respect to substance use, the appellant maintains that he has only used marijuana once and that is what he reported to the evaluators and the Panel. However, one-time use is not the same as having a "brief history" as noted by Dr. Figurelli, the appellant's own evaluator. Moreover, it is not

disputed that the results of the appellant's COPS-R demonstrate various levels of risk regarding the appellant's behavioral attributes. However, the Commission is mindful that the COPS-R is but one test among many factors in considering the psychological suitability of a candidate. Dr. Safran performed a clinical interview and administered other tests. Lastly, while the appellant highlights his positive history, the position he is seeking is a County Correctional Police Officer position. In that regard, it is recognized that a County Correctional Police Officer is a law enforcement employee who must help keep order in prisons and promote adherence to the law. A County Correctional Police Officer, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). *See also, In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003).

In view of the above and having considered the record and the Panel's report and recommendation issued thereon and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's report and recommendation. The preponderance of the appellant's psychological test data and his behavioral record, therefore, supports the conclusion that the appellant is psychologically unsuited for the position of County Correctional Police Officer. Accordingly, the appellant's appeal is denied.

### **ORDER**

The Commission finds that the appointing authority has met its burden of proof that D.B. is psychologically unfit to perform effectively the duties of a County Correctional 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 30<sup>TH</sup> DAY OF SEPTEMBER, 2020

*Deirdre' L. Webster Cobb*

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