



**STATE OF NEW JERSEY**

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

In the Matter of D.C., Police Officer  
(S9999A), City of Paterson

CSC Docket No. 2021-517

Medical Review Panel Appeal

**ISSUE: OCTOBER 12, 2021  
(DASV)**

D.C., represented by Nicholas J. Palma, Esq., appeals his rejection as a Police Officer candidate by the City of Paterson and its request to remove his name from the eligible list for Police Officer (S9999A) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was referred for independent evaluation by the Civil Service Commission (Commission) in a decision rendered August 4, 2021, which is attached. The Commission indicated that the Medical Review Panel was unable to render a determination regarding the appellant's psychological suitability in light of the appellant's disability status with the military and his claim of being symptom free of anxiety. A copy of the record, which included the May 20, 2021 Rating Decision of the Department of Veterans Affairs regarding the appellant, was forwarded to the Commission's independent evaluator Dr. Robert Kanen, who rendered a Psychological Evaluation and Report on August 16, 2021. No exceptions or cross exceptions were filed by the parties.

The Psychological Evaluation and Report by Dr. Kanen discusses the evaluation procedure and reviews the previous psychological findings relative to the appellant. In addition to reviewing the reports and test data submitted by the previous evaluators, Dr. Kanen administered the following: Clinical Interview/Mental Status Examination; Shipley Institute of Living Scale; Public Safety Application Form; Behavioral History Questionnaire, and the Inwald Personality Inventory – II. Upon

his interview of the appellant and based on the test results, Dr. Kanen found that the appellant was functioning within “normal ranges” and had no psychopathology or personality problems that would interfere with his work performance. Dr. Kanen further found that the appellant was “stable and responsible,” “has good self-discipline and persistence,” and “is service oriented.” Regarding the appellant’s disability rating with the military, Dr. Kanen indicated that the appellant was diagnosed with generalized anxiety and received a 50% disability rating, which had been reduced to 30% and “will be reduced to no disability.” Dr. Kanen noted that the appellant showed no evidence of an anxiety disorder during his interview or on personality testing. While the appellant experienced symptoms of anxiety due to caring for his mother and adjusting to civilian life, Dr. Kanen indicated that the anxiety did not appear to have lasted longer than six months and did not impair social or occupational functioning. Moreover, Dr. Kanen stated that the appellant has the cognitive skills necessary to perform the duties of the position. Therefore, Dr. Kanen concluded that the appellant was psychologically suited for employment as a Police Officer.

## CONCLUSION

The Job Specification for 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 and 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.

In the present matter, the Commission referred the appellant for an independent psychological evaluation. Dr. Kanen performed additional tests necessary to determine the appellant’s psychological fitness for a Police Officer position and found that the appellant is functioning within “normal ranges” and does not possess psychopathology or personality problems that would interfere with his work

performance. Dr. Kanen also conducted the necessary tests and a Clinical Interview/Mental Status Examination which addressed the concerns of the Panel. Dr. Kanen found that, while the appellant experienced symptoms of anxiety due to caring for his mother and adjusting to civilian life, the anxiety did not appear to have lasted longer than six months and did not impair social or occupational functioning. Moreover, the appellant's disability rating had been reduced from 50% to 30% and "will be reduced to no disability." Accordingly, Dr. Kanen found the appellant to be psychologically suited for a Police Officer position.

Therefore, having considered the record and the independent Psychological Evaluation and Report issued thereon, and having made an independent evaluation of the same, including a review of the Job Specification for the position sought, the Commission accepts and adopts the findings and conclusions as contained in the independent Psychological Evaluation and Report and orders that the appellant's appeal be granted. The Commission is mindful that any potential behavioral or work performance issues can be addressed during the appellant's working test period as a Police Officer.

### **ORDER**

The Commission finds that the appointing authority has not met its burden of proof that D.C. is psychologically unfit to perform effectively the duties of a 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 his working test period, the Commission orders that the appellant be granted a retroactive date of appointment to July 13, 2020, 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, 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 6<sup>TH</sup> DAY OF OCTOBER, 2021

*Deirdre' L. Webster Cobb*

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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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Attachment

c: D.C.  
Nicholas J. Palma, Esq.  
Kathleen Long  
Todd Pearl  
Division of Agency Services



impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), difficulty establishing and maintaining effective work and social relationships, forgetting recent events, chronic sleep impairment, and forgetting directions.” It was noted that the appellant’s mother was seriously injured, and he had “never had a chance to cope with it.” Additionally, Dr. Sinclair indicated that the appellant reported that filing for a hardship discharge from the military was a “very stressful situation.” Psychological test data supported Dr. Sinclair’s concerns regarding the appellant’s psychological suitability for the subject position. She stated that while the appellant “may be attempting to adjust to life after the military and is now steadily in school, he demonstrated concerns with maturity, fidelity, decision-making, judgment, and clinical anxiety which taken together, rise to the level of a psychological liability for the position sought.” Therefore, Dr. Sinclair did not recommend the appellant for appointment as a Police Officer.

The Panel’s report also notes that the appellant’s psychological evaluator, Dr. David Pilchman, found the appellant to be a “positive candidate for the position of Paterson Police Officer.” Dr. Pilchman indicated that the appellant did not report any alcohol or drug misuse or a history of anxiety or emotional difficulty prior to his mother sustaining an injury to her vertebrae. The appellant became his mother’s main caregiver. Dr. Pilchman also noted that the appellant received many military awards and has been employed as a communication officer with the Haledon Police Department since October 2020. Dr. Pilchman recommended the appellant to the subject position.

At the Panel meeting, the appellant was questioned regarding his juvenile charges and arrest, leaving college, and having a disability rating of 50% from the military due to anxiety. The Panel indicated that the appellant took responsibility for the charges against him and admitted to “acting in an immature manner.” The Panel found that the appellant did not have any problematic behaviors as an adult. Moreover, the Panel accepted the appellant’s statement that he was not ready for college and has since re-enrolled and has handled his course load appropriately. However, what was most concerning for the Panel was the appellant’s disability claim with the military. The Panel indicated that the appellant denied the symptoms which formed the basis for his disability status. He indicated that his rating was reduced from 50% to a 30% disability after he made a request for his disability status be removed on August 6, 2020. The Panel stated that it was not clear from the record why the appellant was still considered partially disabled due to anxiety when he requested that the disability status be removed. Therefore, the Panel recommended that additional information be provided in that regard. The Panel concluded that, apart from the appellant’s current status with disability, “it did not find any significant evidence” that the appellant was not able to meet the job responsibilities of a Police Officer. Accordingly, the Panel recommended that the appellant’s appeal

be held in abeyance until information is obtained on the reasons for the appellant's disability status being changed to 30% disability instead of removal. Thereafter, the information should be forwarded to an independent evaluator so that an accurate assessment of the appellant's psychological suitability for a Police Officer position may be made.

It is noted that, although the appellant did not submit exceptions to the Panel's Report and Recommendation, he presented the Rating Decision of the Department of Veterans Affairs, dated May 20, 2021,<sup>1</sup> which determined that the appellant's disability rating for General Anxiety Disorder be reduced from 50% to 30% effective August 1, 2021. The decision explained that "[a]n evaluation of 30 percent is granted whenever there is occupational and social impairment with occasional decrease in work efficiency and intermittent period of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events)." The appellant maintains that he is in the process of removing this disability status.

## CONCLUSION

The Civil Service Commission (Commission) has reviewed the Report and Recommendation of the Panel and the appellant's submission of the Rating Decision of the Department of Veterans Affairs and finds it appropriate to refer the appellant for an independent evaluation of his psychological suitability for the position of Police Officer.

Initially, it is noted that the Commission relies on the expertise of the Panel and is persuaded that an in-depth psychological evaluation is necessary. In that regard, the Commission emphasizes 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 this case, the Panel did not find the appellant's juvenile charges, arrest, or academic issues to be psychologically disqualifying. However, it was unable to render a determination of the appellant's psychological suitability given the appellant's disability status with the military and his claim of being symptom free of anxiety. Under these circumstances, since the reasoning of the disability rating has been provided, it is prudent for the appellant to be assessed by the Commission's

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<sup>1</sup> The May 20, 2021 Rating Decision noted that there had been a prior rating decision, dated November 9, 2020, which proposed a reduction to a 30% disability rating.

independent evaluator to determine whether he is psychologically suited to undergo the training involved for a Police Officer position and perform the essential functions of the position. Therefore, the Commission agrees with the Panel's recommendation to refer the appellant for an independent psychological evaluation. A copy of the record in this matter, which includes the May 20, 2021 Rating Decision of the Department of Veterans Affairs, shall be forwarded to the Commission's independent evaluator for review.

### ORDER

The Commission therefore orders that D.C. be administered an independent psychological evaluation as set forth in this decision. The Commission further orders that the cost incurred for this evaluation be assessed to the appointing authority in the amount of \$530. Prior to the Commission's consideration of the evaluation, copies of the independent evaluator's Report and Recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

D.C. is to contact Dr. Robert Kanen, the Commission's independent evaluator, within 15 days of the issuance date on this determination to schedule an appointment. If D.C. does not contact Dr. Kanen within the time period noted above, the entire matter will be referred to the Commission for a final administrative determination and the appellant's lack of pursuit will be noted.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>TH</sup> DAY OF AUGUST, 2021

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

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