



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of A.M.D., Fire Fighter  
(M1863W), City of Paterson

CSC Docket No. 2021-1741

Medical Review Panel Appeal

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

A.M.D., represented by Lauren Sandy, Esq., appeals her rejection as a Fire Fighter candidate by the City of Paterson and its request to remove her name from the eligible list for Fire Fighter (M1863W) 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 August 6, 2021, which rendered a Report and Recommendation dated August 6, 2021. Exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations and the information obtained from the meeting. The negative indications related to the appellant’s “emotional dysregulation, stress tolerance, judgment, and social competence.” In that regard, Dr. Jennifer Buhler, the appointing authority’s evaluator, found that the appellant has a history of mental health treatment, with counseling received for anxiety as recent as February 2021 during the job application process, as well as being prescribed anti-anxiety medication since 2015. She has discontinued the use of the medication but used the medication last in December 2020. In addition, Dr. Buhler indicated that the appellant has had three occasions where she has had police contact. The appellant also failed to report a termination from employment due to a “miscommunication.” Regarding psychological testing, Dr. Buhler noted that the appellant produced a result that was “indicative of involvement in ambivalent, intense, and unstable relationships.” Based on her findings and the

tests results, Dr. Buhler did not recommend the appellant for appointment as a Fire Fighter.

The Panel's report also set forth the findings of the appellant's evaluator, Dr. Nicole Rafanello, who found the appellant "free from psychological impairments that would be likely to unreasonably hinder her abilities to adequately and safely carry out the functions of a Fire Fighter." Dr. Rafanello noted that the appellant had served in other public safety positions and has demonstrated a strong work ethic. Dr. Rafanello also stated that the appellant had the insight to seek private counseling which should not be used as a stigma or reason to reject the appellant. In seeking counseling, the appellant's anxiety was quickly resolved. Therefore, based on the appellant's tests result, interviews, and a review of the record, Dr. Rafanello concluded that the appellant is suitable for appointment as a Fire Fighter.

Upon its evaluation, the Panel noted the appellant's various positions as a dispatcher, fire inspector, and a Fire Fighter for the Forest Fire Service. The appellant denied any discipline at work, except for a termination from one position. The appellant discussed her police interactions during the Panel meeting. Two of the incidents involved her boyfriend. One incident related to obtaining her boyfriend's house keys to retrieve items from his home and another incident was a check on her welfare. The third police involvement related to the appellant's neighbors and a parking spot. With respect to the appellant's mental health care, the Panel indicated that it was not concerned with the appellant's use of psychotherapy. It noted that the appellant does not currently take medication and last ingested Xanax on the day she was diagnosed with a brain tumor. The appellant also reported that her OCD symptoms resolved when she was 10 years old. What was of concern "is whether there is an underlying personality disorder/difficulty that would be consistent with someone who has emotional dysregulation difficulties, and thus, increasing the likelihood that this individual could become involved in subsequent escalated interactions with others, similar to the incident with her boyfriend calling for a welfare check." Thus, the Panel recommended that the appellant undergo an independent evaluation which would assess "for the presence of these variables that would impact the psychological characteristics deemed necessary for the position of Fire Fighter." The Panel noted that it was not presented with a copy of the police reports regarding the three incidents in question and that the independent evaluator must be provided with such reports prior to the evaluation.

In her exceptions, the appellant requests that the Panel's Report and Recommendation be modified and that she receive a retroactive date of appointment for the following reasons. First, the appellant indicates that the appointing authority's submission of the pre-appointment psychological report and tests was filed beyond 20 days of notice of her appeal. Notice of the appeal was sent to the appointing authority by way of letter, dated June 3, 2021, and the appointing authority did not provide the appellant's attorney with its submission until June 28,

2021. Thus, pursuant to *N.J.A.C.* 4A:4-6.5(d)2, the appellant asserts that the appointing authority's submission should be deemed untimely and its request to remove her name from the subject eligible list be denied. The appellant states that she "was unduly prejudiced by the appointing authority's delay in providing this report," and it did not request an extension of time to submit the report. Second, the appellant argues that the appointing authority's evaluator improperly based her disqualification on the police interactions, but the appellant states that she was not arrested or criminally charged. Moreover, she contends that had the appointing authority provided the pre-appointment psychological report and tests in a timely manner, she could have supplemented the record with the police reports which she has now provided. The appellant explains each incident and maintains she acted responsibly and that the police reports will corroborate her statements and contradict the appointing authority's report. Lastly, the appellant contends that the Panel's concern of "subsequent escalated interactions" is speculative, and the Panel failed to take into account that she is successfully working without issues and currently holds several public employment positions. She notes that the appointing authority's evaluator did not contact any of her supervisors or references, but her evaluator did. She highlights the positive statements made by her supervisors about her. In conclusion, the appellant submits that the appointing authority has not met its burden of proof.

It is noted that, despite the opportunity, the appointing authority did not file exceptions or cross exceptions to the Panel's Report and Recommendation.

## CONCLUSION

*N.J.A.C.* 4A:4-6.5(d) provides that

Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the Civil Service Commission [Commission], within 20 days, all background information, including any investigations and all complete medical, psychological, and/or psychiatric reports that were the basis for the removal request.

1. The appointing authority shall also furnish to the appellant's attorney or to a New Jersey licensed psychologist or psychiatrist of the appellant's choice upon request all of the information supplied to the [Commission].
2. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

The Civil Service Commission (Commission) has reviewed the Panel's Report and Recommendation and the exceptions filed on behalf of the appellant and does not

find the appellant's exceptions to be persuasive. In that regard, *N.J.A.C.* 4A:4-6.5(d) does not provide for the automatic denial of a request to remove a candidate from an eligible list or the eligible's restoration for an appointing authority's untimely submission of required materials. Rather, the regulation indicates that failure to submit the required materials within the specified time "may" cause the request for removal to be denied and the eligible to be retained on the list. In this case, the notice, dated June 3, 2021, was sent to the appointing authority and the pre-appointment psychological report and tests were sent to the appellant's attorney on June 28, 2021.<sup>1</sup> The appointing authority's alleged five-day delay did not prejudice the appellant. The appellant could have submitted the police reports to challenge the appointing authority's report and tests as soon as she received notice that her appeal was acknowledged. She also had 90 days from the filing of her appeal to submit her independent psychological report, which could have included any arguments and documentation that was deemed necessary to support her independent psychological report. It is emphasized that the date of filing of the appointing authority's submission does not toll the 90-day time period as set forth in *N.J.A.C.* 4A:4-6.5(e). The appointing authority submitted the required materials, and the appellant had the opportunity to supplement the record and dispute the pre-appointment report and tests prior to submission of her appeal to the Panel. The alleged five-day delay does not warrant the relief the appellant requests.

Regarding the appellant's second and third points, 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. Thus, regarding the appellant's second point that the appointing authority's evaluator improperly based the appellant's disqualification on the police interactions, the Commission finds that argument premature as the record is not yet deemed to be fully developed. In other words, an independent evaluation of the appellant may shed light as to whether these incidents demonstrate underlying issues that render the appellant psychologically unsuited for a Fire Fighter position. Indeed, that is why the Panel recommended that the police reports be submitted to the independent evaluator, and an independent psychological evaluation of the appellant be conducted. Lastly, the Panel did take into account the appellant's work history and her public employment positions in making its determination. The Panel highlighted the foregoing in its report. It is emphasized that the Panel's observations regarding the appellant's 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 for Fire Fighters positions. The Commission relies on the

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<sup>1</sup> The appointing authority's evaluator sent the report and tests directly to Commission staff on June 24, 2021, and the appointing authority's representative was directed to forward the materials to the appellant's attorney.

expertise of the Panel and is persuaded that a more in-depth psychological evaluation of the appellant is necessary.

Therefore, the Commission agrees with the Panel's recommendation and finds it necessary to refer the appellant for an independent evaluation by a New Jersey licensed psychologist which shall include a review of the submitted police reports and an in-depth assessment of the appellant's psychological suitability for a Fire Fighter position.

### ORDER

The Commission therefore orders that A.M.D. 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.

A.M.D. 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 A.M.D. 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 6<sup>TH</sup> DAY OF OCTOBER, 2021

*Deirdre L. Webster Cobb*

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Deirdre L. Webster Cobb  
Chairperson  
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