



STATE OF NEW JERSEY

In the Matter of E.F., Fire Fighter
(M1554T and M1854W), Mount Laurel
Fire District 1

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

CSC Docket Nos. 2019-2994 and
2021-812

Medical Review Panel Appeal
List Removal Appeal

**ISSUED: FEBRUARY 23, 2021
(BS/DSV)**

E.F., represented by Thomas F. Flynn, III, Esq., appeals his rejection as a Fire Fighter candidate by Mount Laurel Fire District 1 and its request to remove his name from the eligible lists for Fire Fighter (M1554T and M1854W) on the basis of psychological unfitness to perform effectively the duties of the position.

By way of background, the appellant was removed from the November 7, 2018 (OL181255) certification of the Fire Fighter (M1554T), Mount Laurel Fire District 1, eligible list which expired on March 28, 2019. In disposing of the certification, the appointing authority requested that the appellant's name be removed for a failed psychological examination, which was conducted by its evaluator Dr. Jennifer Kelly whose report was issued on March 7, 2019. The appellant appealed his removal to the Civil Service Commission (Commission). Subsequently, the appeal was brought before the Medical Review Panel (Panel) on February 26, 2020, which rendered a Report and Recommendation on March 1, 2020, recommending the restoration of the appellant to the Fire Fighter (M1554T), Mount Laurel Fire District 1, eligible list. Exceptions were filed on behalf of the appointing authority, and cross exceptions were filed on behalf of the appellant. Upon review, the Commission did not adopt the Panel's recommendation. Rather, the Commission referred the appellant for independent evaluation. Of significance was the appellant's juvenile arrest in 2006 for criminal sexual contact and eventual plea to a harassment charge although the Panel did not find this incident or other behavioral issues in the appellant's background as psychologically disqualifying. However, the Commission found it necessary for the appellant to undergo further evaluation of

his psychological suitability. In that regard, the Commission stated that while the Panel addressed the 2006 incident, it did not address the issue of the appellant's refusal to discuss the matter with Dr. Kelly. Additionally, the Commission found the appellant's omissions when completing a firearm permit to be disturbing and noted that he was all too willing to "pass the buck" to someone else and avoid personal responsibility. The appellant also lacked an objective employment history. Therefore, the Commission found that a closer look needed to be taken at the appellant's behavioral record. It stated that "[th]is closer look should also focus on the issues of judgment, integrity and veracity, in light of the Panel's failure to evaluate his omissions and shortcomings with regard to taking personal responsibility." *See In the Matter of E.F.* (CSC, decided November 4, 2020).

In accordance with the Commission decision, the appellant was evaluated by Dr. Robert Kanen, who issued a Psychological Evaluation and Report on December 4, 2020. No exceptions or cross exceptions were filed by the parties. The Psychological Evaluation and Report discusses the evaluation procedure and reviews the previous psychological findings relative to the appellant. In addition to reviewing the reports, recommendations, and test data submitted by the previous evaluators, Dr. Kanen administered the following: Clinical Interview; Shipley Institute of Living Scale (Shipley); Wechsler Adult Intelligence Scale, 4th Edition (WAIS IV); Verbal Comprehension Index of WAID IV; Wide Range Achievement Test, revision 3, spelling and reading parts; Public Safety Application Form, and the Inwald Personality Inventory – 2. It is noted that since the results of the Shipley demonstrated that the appellant was functioning in the below average range of intelligence, Dr. Kanen administered additional cognitive and reading tests to determine the adequacy of the appellant's ability to perform the duties of a Fire Fighter. Dr. Kanen reported the following regarding the appellant:

He has adequate cognitive and academic skills to perform the job. He worked as a volunteer Firefighter for several years. He has pieced together several part-time jobs. He has managed property that he's owned since 2012. He fixes, maintains the property, and deals with the tenants. He also works part-time as an investigator for his father's law firm. He recently started as a commissioned salesman for a pharmaceutical company. He also worked for Global Security from 2013 to recently, but he has not been working security due to COVID. He also spends time taking care of his elderly grandmother.

He admits to being charged with a sexual offense when he was [an] adolescent. The charge was expunged a couple of years later. He reported that on the advice of his attorney he did not report this arrest on his psychological evaluation for employment. His attorney advised him that because the charge was expunged, he did not want it back on his record.

His attorney advised him that it would not appear in his background; however, the attorney was wrong. [The appellant] has no arrests as an adult. He shows no evidence of temper control problems. He regrets the incident with the female and recognizes that he hurt her. He has matured. He has a steady girlfriend and has never been the subject of a restraining order.

On personality testing, he falls within normal ranges. He falls into the category likely to recommend for employment in a public safety/security position based on the estimated psychologist recommendation. He falls into the category likely to meet expectations in his ability to relate and work with the public and in the overall rating by a field training officer.

The appellant presents as stable and responsible. He shows no evidence of psychopathology or personality problems that would interfere with work performance.

Therefore, Dr. Kanen concluded that the appellant is psychologically suitable for employment as a Fire Fighter.

Subsequent to the Commission's referral of the appellant for independent psychological evaluation, the September 19, 2019 certification (OL191142) of the Fire Fighter (M1854W), Mount Laurel Fire District 1, eligible list was disposed on November 19, 2020. The appellant appeared on the certification of this new eligible list. In disposing of the certification, the appointing authority requested the appellant's removal due to the failed psychological examination from the initial evaluation and report of Dr. Kelly dated March 7, 2019.¹ Thereafter, the appellant filed an appeal with the Commission, recounting the events of his prior certification.

CONCLUSION

The Job Specification for the title of Fire Fighter is the official job description for such positions within the Civil Service system. According to the specification, Fire Fighters are entrusted with the safety and maintenance of expensive equipment and vehicles and are responsible for the lives of the public and other officers with whom they work. Some of the skills and abilities required to perform the job include the ability to work closely with people, including functioning as a team member, to exercise tact or diplomacy and display compassion, understanding and patience, the ability to understand and carry out instructions, and the ability to

¹ Based on longstanding administrative practice, a psychological assessment for employment in law enforcement is generally considered valid for one year. See *In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008).

think clearly and apply knowledge under stressful conditions and to handle more than one task at a time. A Fire Fighter must also be able to follow procedures and perform routine and repetitive tasks and must use sound judgment and logical thinking when responding to many emergency situations. Examples include conducting step-by-step searches of buildings, placing gear in appropriate locations to expedite response time, performing preparatory operations to ensure delivery of water at a fire, adequately maintaining equipment and administering appropriate treatment to victims at the scene of a fire, *e.g.* preventing further injury, reducing shock, restoring breathing. The ability to relay and interpret information clearly and accurately is of utmost importance to Fire Fighters as they are required to maintain radio communications with team members during rescue and firefighting operations.

In the instant 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 Fire Fighter 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 which addressed the concerns of the Panel. Dr. Kanen reported the appellant's work history and the reason for his refusal to discuss the 2006 juvenile arrest with Dr. Kelly, which appears to be a mistaken reliance on his attorney's faulty advice. Dr. Kanen did not describe any incident or psychological trait which would demonstrate that the appellant possessed a pattern of avoidance for personal responsibility. Rather, Dr. Kanen described the appellant as "stable and responsible" and falling into categories "likely to recommend for employment in a public safety/security position based on the estimated psychologist recommendation" and "likely to meet expectations in his ability to relate and work with the public and in the overall rating by a field training officer." While Dr. Kanen noted the results of the Shipley demonstrated that the appellant may have a below average range of intelligence, Dr. Kanen administered additional tests and found the appellant to possess adequate cognitive and academic skills to perform the job of a Fire Fighter. The Commission emphasizes that, in addition to his own evaluation and testing, Dr. Kanen conducts an independent review of the Panel's Report and Recommendation and the raw data, recommendations, and conclusions drawn by the various evaluators prior to rendering his own conclusions and recommendations, which are based firmly on his expertise in the field of psychology and his experience in evaluating the psychological suitability of hundreds of applicants for employment in law enforcement and public safety positions. Nonetheless, the Commission is mindful that any potential behavioral or work performance issues can be addressed during the appellant's working test period as a Fire Fighter.

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 of his removal from the Fire Fighter (M1554T), Mount Laurel Fire District 1, eligible list be granted and he be awarded a retroactive date of appointment consistent with the Commission's Order in this matter. Accordingly, the appellant's appeal of his removal from the Fire Fighter (M1854W), Mount Laurel Fire District 1, eligible list has been rendered moot and is hereby dismissed.²

ORDER

The Commission finds that the appointing authority has not met its burden of proof that E.F. is psychologically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that the Fire Fighter (M1554T), Mount Laurel Fire District 1, eligible list be revived and the appellant's name be restored. 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 June 24, 2019, the date he would have been appointed if his name had not been removed from the Fire Fighter (M1554T), Mount Laurel Fire District 1, 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.

It is further ordered that E.F.'s appeal of his removal from the Fire Fighter (M1854W), Mount Laurel Fire District 1, eligible list be dismissed as moot.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

² It is noted that if the appellant is removed from the Fire Fighter (M1554T), Mount Laurel Fire District 1, eligible list due to an adverse finding in his updated background check, the appellant will be entitled to appeal that removal.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17TH DAY OF FEBRUARY, 2021

Deirdre' L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: E.F.
Thomas F. Flynn, III, Esq.
John M. Colucci, Chief
Division of Agency Services