



STATE OF NEW JERSEY

In the Matter of C.W.G.,
Police Officer (S9999A), Township of
West Orange

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

CSC Docket No. 2021-437

Medical Review Panel Appeal

ISSUED: AUGUST 6, 2021 (BS)

C.W.G., represented by John D. Feeley, Esq., appeals his rejection as a Police Officer candidate by the Township of West Orange 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 brought before the Medical Review Panel (Panel) on May 14, 2021, which rendered a Report and Recommendation on May 14, 2021. Exceptions were filed on behalf of the appointing authority, and cross exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations. It indicates that Dr. Lewis Z. Schlosser (evaluator on behalf of the appointing authority) conducted a psychological evaluation of the appellant and noted that the appellant evidenced significant concerns in the areas of social competence, dutifulness, integrity, and stress tolerance. Dr. Schlosser indicated that the appellant had been on psychiatric medication for 10 years, but it did not appear to effectively manage his anxiety. Moreover, Dr. Schlosser found that the behavioral record indicated that the appellant had abandoned his post in 2019 and had been asked to resign from another position. Although the appellant was disciplined for abandoning his post, as opposed to being terminated, Dr. Schlosser considered this behavior to be of serious concern given the position sought. In addition, Dr. Schlosser reported that the appellant's test data revealed a history of depression, the potential to become depressed again in the future, and that the appellant may have significant

difficulties “navigating the emotional requirements” of a Police Officer, such as stress, conflict, and trauma. On the Personality Assessment Inventory, Dr. Schlosser stated that there was a significant elevation on the consistency scale, which indicates “inconsistency in responses to similar items” that “could arise from a variety of sources ranging from confusion or carelessness to an attempt at impression management.” Test data results were also suggestive of an individual who was “unhappy, sensitive, pessimistic and self-doubting.” As a result, Dr. Schlosser did not recommend the appellant for appointment to the subject position.

The Panel’s report also indicates that Dr. Daniel B. Gollin (evaluator on behalf of the appellant) carried out a psychiatric evaluation and indicated that the appellant was open and forthcoming during his interview regarding aspects of his history that might reflect negatively. Dr. Gollin stated that the appellant’s history of mild childhood bullying and primarily performance-based anxiety were duly noted and that his medication is “totally safe for the purpose of performing police work.” Dr. Gollin found no objective evidence that the treatment had been ineffective despite Dr. Schlosser’s reported observations. Additionally, he determined that the negative events in the appellant’s history were isolated events and did not establish an overall pattern of dysfunctional or disordered behavior. Dr. Gollin also found no evidence to suggest that the appellant failed to benefit or learn from his experiences. Dr. Gollin concluded that the appellant’s history, clinical interview, and documentation from Dr. Schlosser did not support Dr. Schlosser’s conclusion that the appellant was not psychologically suitable for employment as a Police Officer. Dr. Gollin opined that, “within a reasonable degree of psychiatric and psychological probability,” the appellant was psychologically fit to perform the duties of a Police Officer.

An additional psychological evaluation of and on behalf of the appellant was conducted by Dr. David Pilchman. Dr. Pilchman reviewed the appellant’s records and mental status and concluded that the appellant was a suitable candidate for employment as a Police Officer.

As set forth in the report, the Panel questioned the appellant regarding his employment history, including leaving his post and resigning from a job. The appellant satisfactorily explained the incidents cited in Dr. Schlosser’s report. With regard to the appellant’s anxiety, the appellant explained that he experienced anxiety in the third or fourth grade and was prescribed Sertraline 100mg (Zoloft). He continues to receive a prescription from his primary care physician and has denied receiving any other mental health treatment. The appellant reported experiencing no functional impairments from anxiety on his job or in normal living, and the Panel noted that there was no behavioral record of anxiety-related difficulties in school or employment. Therefore, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicated that the appellant was psychologically fit

to perform effectively the duties of the position sought, and therefore, the action of the appointing authority should not be upheld. The Panel recommended that the appellant be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by Nicole D. Espin, Esq., argues that the conclusions of the Panel are inconsistent with *In re Vey*, 124 *N.J.* 534 (1991), which establishes a three part validation test for removing law enforcement candidates based on psychological reasons, and that the report of Dr. Schlosser satisfies this criteria. Specifically, Dr. Schlosser utilized professionally recognized psychological assessments, identified the appellant's specific personality traits, and how these traits are job related and may result in "difficulties navigating the emotional requirements" of a Police Officer. Dr. Schlosser demonstrated that the appellant had social adjustment issues, depression, and personality problems. The appointing authority respectfully requests that the Civil Service Commission (Commission) reject the Panel's Report and Recommendation.

In his cross exceptions, the appellant argues that nothing in the Panel's Report and Recommendation was "arbitrary, capricious, or unreasonable." Rather, he maintains that the decision was well supported by the substantial credible evidence. The appellant contends that the appointing authority misconstrued the standard articulated in *Vey, supra*, and that the finding of its evaluator failed to show a diagnosis which rose to the level of disqualification. The appellant contends that his two evaluators expressed their expert opinions that the appellant was indeed psychologically suitable to serve as a Police Officer and that the Panel accepted "those credibility findings." Therefore, the appellant maintains that the Commission should adopt the Panel's Report and Recommendation.

CONCLUSION

The Job Specification for the title of 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 Panel's Report and Recommendation and 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. In this case, the Panel did not find the appellant's history of treatment for anxiety to rise to the level of disqualification. The Commission defers to and agrees with the expert opinion of its Panel. The concerns of the appointing authority's evaluator regarding the appellant's psychological suitability has been thoroughly reviewed. The Commission has also considered the exceptions and cross exceptions of the parties and has reviewed the job specification for Police Officer and does not find the appellant's exceptions persuasive. Further, the Commission is mindful that any potential behavioral or performance issues regarding the appellant's employment can be addressed during the working test period.

Therefore, having considered the record, including the Job Specification for Police Officer and the duties and abilities encompassed therein, 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 and grants the appellant's appeal.

ORDER

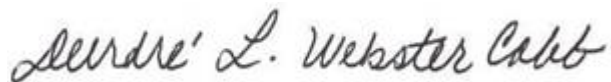
The Commission finds that the appointing authority has not met its burden of proof that C.W.G. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issue 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 appellant be granted a retroactive date of appointment to September 17, 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 or counsel fees, 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 4TH DAY OF AUGUST, 2021



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Chairperson
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