



**STATE OF NEW JERSEY**

In the Matter of C.L.S., Fire Fighter (M1870W), Borough of Roselle	:	<b>FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION</b>
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CSC Docket No. 2021-569	:	
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	:	Medical Review Panel Appeal
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**ISSUED JANUARY 21, 2022: (BS)**

C.L.S., represented by Robert K. Chewning, Esq., appeals his rejection as a Fire Fighter candidate by the Borough of Roselle and its request to remove his name from the eligible list for Fire Fighter (M1870W) 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 July 15, 2021, which rendered its Report and Recommendation on July 18, 2021. Exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations. Dr. Guillermo Gallegos, evaluator for the appointing authority, conducted a psychological evaluation and characterized the appellant as evidencing problems including emotional dysregulation and poor stress tolerance, judgment, and integrity. Dr. Gallegos noted that the appellant was currently rated as having a 50% disability from the military for adjustment disorder with a depressed mood. The appellant reported experiencing anxiety and sleep disturbances. Dr. Gallegos indicated that, according to the appellant’s Veterans Administration (VA) records, the appellant’s symptoms included difficulty in adapting to stressful circumstances, depressed mood, disturbances of motivation and mood, flattened affect, impaired judgment, anxiety, chronic sleep impairment, and occupational and social impairment with reduced reliability and productivity. Dr. Gallegos opined that some of these symptoms would directly interfere with the appellant’s ability to consistently and safely perform the duties of a Fire Fighter. Additionally, the appellant informed Dr. Gallegos that his disabilities were permanent, although VA records indicated that the appellant’s disability was considered temporary. Dr. Gallegos also noted the appellant had been

previously psychologically disqualified for a position as a correction officer in 2017. Although he had acknowledged this on the Biographical Summary Form, he attempted to conceal this information during the interview which raised serious concerns regarding his integrity.<sup>1</sup> Dr. Gallegos found the psychological test data supported his conclusions regarding the appellant, and he did not recommend the appellant for appointment.

The Panel's report also indicates that Dr. Robert Kanen, evaluator on behalf of the appellant, conducted a psychological evaluation and determined that the appellant was functioning within normal ranges. Dr. Kanen stated that, while in the military, the appellant was deployed to Afghanistan, did not see combat, and was honorably discharged. The appellant was interviewed by a psychologist as part of the discharge process and that psychologist diagnosed him as having chronic adjustment disorder with depressed mood.<sup>2</sup> The appellant takes medication for sleep problems and Dr. Kanen stated that the appellant showed no evidence of clinical depression or a generalized anxiety disorder. Dr. Kanen found the appellant to be open and honest in his responses to the personality test questions. Dr. Kanen opined that the appellant falls into the category of most likely to meet expectations although he fell into the category of not likely to recommend based on the estimated psychologist recommendation due to his medication. Nonetheless, Dr. Kanen concluded that the appellant was psychologically suitable to serve as a Fire Fighter and that taking medication "does not alone disqualify him for the position."

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. Dr. Gallegos raised concerns about the appellant having emotional dysregulation and poor stress tolerance, judgment, and integrity, as well as the service-connected disability. Further, Dr. Gallegos indicated that the appellant attempted to conceal his prior psychological evaluation. By contrast, Dr. Kanen did not see evidence of psychological problems but noted that the appellant had been diagnosed with an adjustment disorder which included depressed mood on his withdrawal from the military. Upon its review, the Panel found the appellant's behavior unremarkable in that he did not show signs of any overt pathology such as psychosis or thought disorder. He answered all of the Panel's questions in a cooperative manner. The appellant confirmed that he continued to have a service-connected 50% disability rating related to trouble sleeping on his return from active duty. He reported that the VA recently switched his medication to Lexapro, which is often used to treat anxiety as well as depression. The appellant advised the Panel that his medication change had been effective and that his sleep

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<sup>1</sup> The Panel did not defer to Dr. Gallegos' opinion that the appellant attempted to conceal a prior psychological evaluation. Rather, it found the appellant's response as reasonable that he was confused about the question given that the appellant noted the prior evaluation in the Biographical Summary Form.

<sup>2</sup> The Panel noted in its report that Dr. Kanen did not state that the appellant has a 50% service-connected disability for adjustment disorder with a depressed mood.

had significantly improved. Nonetheless, the Panel was concerned that the appellant did not endorse any of the other symptoms or impairments the VA cited in its disability determination. Also particularly concerning was the appellant's disability for reasons that, in the Panel's opinion, were inconsistent with the ability to perform the duties of the position. The Panel opined that review by the VA regarding the persistence of the appellant's service-connected disability for adjustment disorder with depressed mood would be helpful in mitigating its concerns. The Panel also expressed concern about the appellant's level of credit card debt, which it found to be indicative of marginal decision making. The Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Fire Fighter, indicated that the appellant was psychologically unfit to perform effectively the duties of the position sought, and therefore, the action of the appointing authority should be upheld. Accordingly, the Panel recommended that the appellant be removed from the subject eligible list.

In his exceptions, the appellant maintains that the Panel's Report and Recommendation is "arbitrary" and "capricious," fails to consider and ignores several material facts which includes the fact he is functioning within normal ranges and fails to provide adequate weight to the report of Dr. Kanen who concluded that the appellant has no psychopathology or personality problems "that would interfere with work performance." Further, the appellant asserts that the VA did not consider his disability a total disability based on individual unemployability. He emphasizes that he has been employed with the United States Postal Service (USPS) for the past four years. Furthermore, the appellant contends that the Panel failed to specify what Fire Fighter duties he would be unable to perform based on his "disability." The appellant cites *In the Matter of Vey*, 124 N.J. 534, 540 (1991) which states in pertinent part that an appointing authority must demonstrate by "professionally accepted methods" that the selection device is "predictive of or significantly correlated" with specific elements of required job behaviors, which the appointing authority and the Panel failed to do. The appellant reiterates that he is able to work despite his VA disability. He submits that adopting the Panel's Report and Recommendation due to the cited failures would not only be arbitrary but lead to a "slippery slope" of denying all people who suffer from a service-related disability "for no reason other than their disability" which would violate the Americans with Disabilities Act and the New Jersey Law Against Discrimination. The appellant respectfully requests that he be restored to the subject eligible list and be deemed psychologically fit.

## 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 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, and 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.

The Civil Service Commission (Commission) has reviewed the Job Specification for this title and the duties and abilities encompassed therein and finds that the psychological traits which were identified and supported by test procedures and the behavioral record relate adversely to the appellant's ability to effectively perform the duties of the title. Initially, it is noted 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 prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented to it and its experience reviewing thousands of applicants. The Commission is not persuaded by the exceptions filed on behalf of the appellant as the Panel has sufficiently identified the behavioral and psychological traits that do not support the appellant's appointment at this time.

In that regard, of concern to the Commission, which was noted by both the evaluators for the appointing authority and the appellant and highlighted by the Panel, is the appellant's adjustment disorder with depressed mood, for which he receives a 50% disability rating from the VA, and his attempts to minimize this as simply a sleep disorder by neglecting to endorse any of the other symptoms or impairments the VA cited in its disability determination. The appellant's symptoms include difficulty in adapting to stressful circumstances, depressed mood, disturbances of motivation and mood, flattened affect, impaired judgment, anxiety, chronic sleep impairment, and occupational and social impairment with reduced

reliability and productivity. According to the Job Specification for Fire Fighter, the appellant must have the ability to work closely with people, to understand and carry out instructions, to think clearly and apply knowledge under stressful conditions, to handle more than one task at a time, follow procedures and perform routine and repetitive tasks, and use sound judgment and logical thinking when responding to many emergency situations. As suggested by the Panel, without access to an updated review by the VA regarding the persistence of the appellant's service-connected disability for adjustment disorder with depressed mood, there is nothing to mitigate concerns of his cited symptoms which clearly would affect his performance as a Fire Fighter. While the appellant may be successful in his current position with the USPS, that position's duties should not be compared with the responsibilities which the appellant would hold as a Fire Fighter as set forth in the Job Specification. Also of concern to the Commission is the fact that the appellant continues to receive benefits for a 50% disability from the VA if, as the appellant appears to assert, his adjustment disorder with depressed mood is no longer an issue and his disability is related only to trouble sleeping. However, he has not pursued to remove the disability determination or have it adjusted accordingly. Furthermore, the Panel determined that the appellant evidenced marginal decision making as evidenced by the level of his credit card debt. Clearly, a Fire Fighter must possess sound judgment and not marginal thinking in making decisions in stressful and emergency situations.

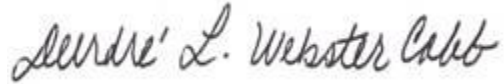
Under these circumstances, the Commission rejects the appellant's argument that he is being denied "for no reason other than [his] disability" and finds no basis to find unlawful discriminatory reasons for the removal of his name from the subject eligible list. Accordingly, based on the foregoing, the Commission cannot ratify the appellant's psychological suitability to serve as a Fire Fighter. Therefore, 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 and denies the appellant's appeal.

### **ORDER**

The Commission finds that the appointing authority has met its burden of proof that C.L.S. is psychologically unfit to perform effectively the duties of a Fire Fighter, 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 19<sup>TH</sup> DAY OF JANUARY, 2022



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