



STATE OF NEW JERSEY

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

In the Matter of J.M., Police Officer
(S9999A), City of Elizabeth

CSC Docket No. 2022-681

List Removal Appeal

ISSUED: AUGUST 3, 2022 (DASV)

J.M., represented by Stephen B. Hunter, Esq., appeals his rejection as a Police Officer candidate by the City of Elizabeth 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.

The relevant facts are as follows:

1. The appellant's name was certified on April 15, 2021 from the Police Officer (S9999A), City of Elizabeth, eligible list. In disposing of the certification, the appointing authority requested the removal of the appellant's name as he was found psychologically unsuitable for the position. The certification was disposed on September 16, 2021, and notices of removal were dated that day.
2. Prior to receipt of the notice of removal, the appellant filed a letter of appeal by email and regular mail, postmarked September 15, 2021, presenting a certification that he had been verbally advised on June 28, 2021 by an appointing authority representative that Dr. Richard Cevasco, the appointing authority's psychologist, did not recommend him for appointment as a Police Officer.

3. The parties were then sent a letter, dated September 24, 2021, acknowledging the September 15, 2021 appeal and advising that submissions are to be filed within 20 days from the date of the letter. Additionally, the parties were advised that if the appellant wished to submit a report and recommendation from a New Jersey licensed psychologist or psychiatrist, he may do so within 90 calendar days from the filing of the appeal to the Civil Service Commission (Commission) pursuant to *N.J.A.C. 4A:4-6.5(e)*. Furthermore, the parties were informed that the date of receipt of the appointing authority's submission did not toll the regulatory time period. Thus, the appellant's report was due on or before Tuesday, December 14, 2021. The September 24, 2021 letter also informed the parties that if a party needed an extension of the time periods, the party must notify this agency in writing with the reason for the extension.
4. Postmarked October 8, 2021 and on behalf of the appointing authority, Robert J. Lenahan, Jr., Special Counsel, filed the pre-appointment psychological report and tests with the Commission. The appellant had been evaluated by Dr. Cevasco on June 25, 2021. A copy of the submission was sent to the appellant's attorney. Additional copies of tests and background information were sent by email on November 9, 2021.
5. On October 18, 2021, staff from the appellant's attorney's office contacted agency staff and confirmed that the appellant's independent psychological report was due 90 calendar days from September 15, 2021.
6. By letter dated December 3, 2021, the appellant's attorney requested an extension of time to January 10, 2022 to submit the appellant's independent psychological report, indicating that "Mr. [M.] has just been able to schedule an interview with Dr. David Gallina for December 8, 2021." In response, the appellant was given the opportunity to submit the specific reasons for the delay.
7. On December 16, 2021, the appellant certified that he was unable to pay for Dr. Gallina's services and his "failure to quickly take care of the financial arrangements concerning Dr. Gallina resulted in the need to request the extension of time at issue." He further stated that although he is currently employed as a County Correctional Police Officer, "it has been a

lifelong dream” of his to be a Police Officer with the City of Elizabeth.

8. In response, agency staff sent the appellant’s attorney a letter, dated January 7, 2022, advising that the request for an extension could not be granted as the Commission previously found that monetary issues do not provide good cause reasons to extend the regulatory time period to submit an independent psychological report. Moreover, since the appellant had not presented documentation within the timeframe allowed to refute the findings of his pre-appointment psychological evaluation, agency staff indicated that there was not a basis to disturb the determination of the City of Elizabeth and the appeal file had been closed.
9. By email and postmarked January 10, 2022, the appellant submitted Dr. Gallina’s report, which found him psychologically suited for the position of Police Officer. Dr. Gallina’s evaluation of the appellant was conducted on December 8, 2021, and his report was issued on January 4, 2022. The appellant requested that the Commission reconsider the closure of his appeal and accept Dr. Gallina’s report, emphasizing that the request for an extension to submit his independent psychological report had been agreed to by the appointing authority.

It is noted that in the pre-appointment psychological report, Dr. Cevasco found that the appellant’s “judgement appears flawed especially when it comes [to] financial decisions. He has had financial difficulties for many years and yet went on a \$5000.00 vacation for which his account is currently past due. His fiscal irresponsibility raises concerns on at least two levels, one that he could be manipulated for his own financial benefit and two, that his judgment is lacking in being able to make reasonable decisions, being able to appreciate the consequences of his decisions.” Dr. Gallina also acknowledged the appellant’s financial difficulties and noted that the difficulties occurred when the appellant was 18 to 20 years old, when he had low paying jobs and spending more than he made. However, Dr. Gallina reported that the appellant is presently a County Correctional Police Officer with Essex County and earning \$55,000 per year. Additionally, the appellant “is currently paying off his debt in a methodical manner.” The appellant is now 29 years old. It is further noted that agency records indicate that the appellant was appointed as a County Correctional Police Officer with Union County effective September 6, 2016. He transferred to Essex County by way of intergovernmental transfer on May 15, 2021 and is receiving a full-time salary as a County Correctional Police Officer.

CONCLUSION

N.J.A.C. 4A:4-6.3(b) provides that the appointing authority shall have the burden of proof in medical or psychological disqualification appeals. Moreover, *N.J.A.C.* 4A:4-6.5(d) states that:

Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the [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.

Additionally, in order to further facilitate the timely processing of these types of appeals, the Commission amended *N.J.A.C.* 4A:4-6.5(e), effective June 21, 2017, to require that the appellant, if he or she chooses to do so, to submit a report from a physician or psychologist/psychiatrist to rebut the appointing authority's report within 90 calendar days of filing of the appeal. See 49 *N.J.R.* 492(a) and 49 *N.J.R.* 2239(a). These timeframes were designed to facilitate the opportunity for the parties to establish a contemporaneous record of an eligible's medical or psychological condition at the time of appointment for the Commission to consider. In that regard, based on longstanding administrative practice, a psychological assessment for employment in law enforcement is only 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).

Nonetheless, *N.J.A.C.* 4A:4-6.5(f) indicates that the Commission may extend the time period for filing the required reports for good cause. It is noted that, in accordance with Section 6 of Executive Order 103 issued in response to the COVID-19 pandemic, the Commission approved various emergency adoptions of temporary rule relaxations and modifications to *N.J.A.C.* 4A with respect to timeframes associated with administrative appeals. In particular, *N.J.A.C.* 4A:4-6.5(e) was modified to include the good cause provision found in *N.J.A.C.* 4A:4-6.5(f). *N.J.A.C.* 4A:4-6.5(e) previously stated that "[t]he appellant may submit to the [Commission] a report from a New Jersey licensed physician, psychologist, or psychiatrist of his or

her own choosing, which must be submitted within 90 calendar days of the filing of his or her appeal to the Commission.” Effective April 9, 2020, the regulation was modified and states that “[t]he appellant may submit to the [Commission] a report from a New Jersey licensed physician, psychologist, or psychiatrist of his or her own choosing, which must be submitted within 90 calendar days, **which may be extended for good cause**, of the filing of his or her appeal to the [Commission].”

However, the 90-day time period to submit a psychological or psychiatric report is not contingent upon the filing of the appointing authority’s submission. *N.J.A.C. 4A:4-6.5(e)* specifically states that the appellant’s report must be filed within 90 calendar days *of the filing of his or her appeal*, notwithstanding that the time period may be extended for good cause. Furthermore, *N.J.A.C. 4A:4-6.5(g)* indicates that the Commission shall either conduct a written record review of the appeal or submit psychological appeals to the Medical Review Panel for its report and recommendation. In that regard, given the volume of psychological disqualification appeals received by the Commission each year in conjunction with the fact that the Commission utilizes the Medical Review Panel, psychological medical professionals who review each case, the adjudication of psychological appeals is a lengthy process that can take up to two years. Specifically, the process consists of compiling the record which allows the appellant up to 90 days to submit an independent psychological evaluation as noted above; scheduling a meeting with the Medical Review Panel which generally meets once a month to review a maximum of six cases; awaiting the Medical Review Panel’s report to be issued; permitting parties to submit exceptions and cross exceptions to the Report and Recommendation within 10 and five days of receipt, respectively; and issuing the Commission’s final determination. If the Commission determines that a candidate was improperly rejected for the position, the remedy provided is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes. Therefore, in order to ensure a fair process to all parties, it is imperative that the timeframes established throughout the process are strictly enforced.

In the instant matter, the appellant has not shown good cause reasons to extend the timeframe. Initially, as set forth above, the 90-day timeframe to submit an independent psychological or psychiatric report is a regulatory time period and not contingent upon the filing of the appointing authority’s submission. Nevertheless, the appointing authority had submitted the pre-appointment psychological report in a timely manner with copies of additional tests and documents sent later. Thus, any argument regarding the timing of the appointing authority’s submission is not persuasive to grant the appellant’s request to re-open his appeal and accept his independent psychological report.

Moreover, under certain circumstances, good cause could be established if an evaluation occurred prior to the due date, and through no fault of the appellant, the report was issued late and not forwarded to this agency. However, in the instant

matter, although the appellant was evaluated by Dr. Gallina on December 8, 2021, prior to the independent psychological report's due date of December 14, 2021, the appellant has admitted that the delay occurred on account of his lack of pursuit of an appointment with Dr. Gallina due to what he describes as not taking care of "financial arrangements," although he has a full-time salary as a County Correctional Police Officer. Specifically, the appellant certifies that his "failure to quickly take care of the financial arrangements concerning Dr. Gallina resulted in the need to request the extension of time at issue." However, monetary issues do not provide good cause reasons to extend the regulatory time period in submitting a psychological report. In *In the Matter of E.R.* (CSC, decided June 12, 2019), the Commission stated that "[w]hile the Commission understands the financial burden an appeal may cause, it does not overcome an appellant's responsibility in pursuing his or her appeal. An appeal cannot be held open for that reason." The Commission notes that the appellant's judgment with regard to his financial decisions appear not to have changed as found by Dr. Cevasco. Notwithstanding Dr. Gallina's opinion on that issue, the appellant continues to exhibit a lack of judgment "in being able to make reasonable decisions, being able to appreciate the consequences of his decisions" as determined by Dr. Cevasco. The appellant was fully aware of the due date of his independent psychological report, and once again, "failed to appreciate the consequences of his decisions." The Commission is mindful that it is an appellant's responsibility to begin securing a psychological evaluation as soon as the appellant files an appeal or even before that time in preparation for the appeal and to address any contingencies that may arise so that the appellant may meet the 90-day regulatory timeframe and not face dismissal of the appeal, as only good cause can extend the time period.

In addition, although the appointing authority may have agreed to an extension, the time period is a regulatory time period, and as set forth above, the Commission does not find good cause to extend it. The Commission notes that it is prejudicial to the appointing authority, and potentially a current employee, to allow the appellant's appeal to proceed. In that regard, the remedy provided to successful appellants in psychological disqualification cases is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes. Should a position not be available, the last employee hired must be displaced. *See In the Matter of Stanley Kolbe, Jr.* (CSC, decided May 21, 2014) (Commission enforced prior order granting retroactive appointment to the appellant after a mandated appointment resulting from successfully appealing a failed psychological evaluation and dismissed the appointing authority's claims of fiscal constraints and recent layoff when three employees who ranked lower than the appellant on eligible list were not impacted by the layoff) and *In the Matter of J.D.*, Docket No. A-1271-20 (App. Div. February 23, 2022) (Court affirmed Commission decision to deny re-opening appeal where good cause reasons were not shown to extend the time period to submit an independent psychological report, noting that prejudice could occur to innocent third parties, and, as the Commission stated, "the remedy provided to successful appellants

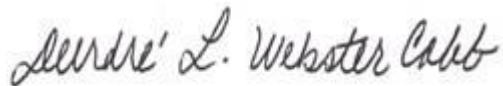
in psychological disqualification cases is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes”). Accordingly, the appellant’s request to continue with his appeal must be denied.

ORDER

Therefore, it is ordered that this appeal be dismissed.

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 3RD DAY OF AUGUST 2022



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