



STATE OF NEW JERSEY

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

In the Matter of D.J.Q., Fire Fighter
(M1855W), City of New Brunswick

CSC Docket No. 2022-546

Medical Review Panel Appeal

ISSUED: JULY 5, 2022 (BS)

D.J.Q., represented by Michael L. Prigoff, Esq., appeals his rejection as a Fire Fighter candidate by the City of New Brunswick and its request to remove his name from the eligible list for Fire Fighter (M1855W) 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 February 10, 2022, which rendered its Report and Recommendation on February 26, 2022. Exceptions were not filed by the parties. However, the Commission shall address the statement of the appointing authority's Fire Director, which was presented prior to the issuance of the Report and Recommendation. It is noted that the appellant, his attorney, and his doctor were present at the Panel meeting, as well as the appointing authority, its doctor, its attorney, and the Fire Director.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Christopher Sbaratta, evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and found evidence of problems related to emotional regulation and stress tolerance. Dr. Sbaratta characterized the appellant as having a history of being treated for depression and panic which included psychotropic medicines, in-patient hospitalization, and intensive outpatient aftercare following a 2012 suicide attempt. He indicated that while the appellant had been functioning with greater stability since the incident, the severity and near-lethality of the suicide attempt raised concerns about how the appellant would

function when psychological and physical stress tolerance would be tested continuously. Dr. Sbaratta noted that relative to the stressors and responsibilities inherent with a Fire Fighter position, the appellant's panic/anxiety and depression had been provoked by "relatively minor and developmentally typical (romantic loss, college workload)" events. Dr. Sbaratta found no compelling psychological data to suggest that the appellant would be able to tolerate the psychological stressors of a Fire Fighter and opined that, should the appellant experience similar stress in his personal life, he would be at an increased risk of self-harm based on his history. Dr. Sbaratta also expressed concerns about the appellant's credibility given that he was unable or unwilling to disclose the medication he was prescribed or the location he was hospitalized after his suicide attempt. Further, the appellant denied items related to suicidal ideation or suicidal attempts on the Personality Assessment Inventory, which should have been endorsed given his known mental health history. The test data supported Dr. Sbaratta's concerns. As a result, Dr. Sbaratta concluded that the appellant was not psychologically suitable for employment as a Fire Fighter.

The Panel's report also indicates that Dr. Jonathan Wall, evaluator on behalf of the appellant, conducted a psychological evaluation and characterized the appellant as having matured in the 10 years following his suicide attempt and his judgment and executive functions to inhibit impulsive behaviors are more developed. Dr. Wall stated that the appellant's health maturation and adjustment are evident in his successful work history and from his references, who spoke well of his professionalism. Dr. Wall found that the appellant benefitted from treatment and his social support network following his suicide attempt and that his commitment to self-care and wholesome relationships would serve him well. Dr. Wall noted that the appellant had a "passion for working with other professionals to prevent and stop fires." Dr. Wall concluded that the appellant was a positive candidate for employment as a Fire Fighter.

As set forth by the Panel in its report, the evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The appointing authority's evaluator raised concerns about the appellant's ability to tolerate the stress associated with a Fire Fighter position and his credibility, while the appellant's evaluator cited the appellant's decade of health and maturation with improved judgment following his 2012 suicide attempt. The Panel indicated that, during his appearance before the Panel, the appellant responded to questions in a cooperative manner and did not show any signs of overt psychopathology, such as psychosis or thought disorder. It noted that the appellant continues to be employed as a fire inspector with the City of New Brunswick and has never received any complaints from the public, informal reprimands, or formal discipline.¹ His last motor vehicle violation occurred in 2013, and there were no past or present indications of substance abuse. The Panel viewed the appellant's 2012 suicide

¹ Agency records indicate that the appellant was appointed as a Housing Inspector on October 28, 2014, and received an appointment as a Fire Prevention Specialist effective July 8, 2019.

attempt as extremely serious but indicated that the appellant benefitted from extensive outpatient therapy in the year following his suicide attempt. The appellant also reported that, should he experience any warning signs of mood problems, he would speak with his father and had access to the Employee Assistance Program through his employer. The Panel found that the appellant was able to identify the signs of mood disorder, knew what services were available, and had a plan to respond should the signs reoccur. The Panel further found no ongoing evidence of impulsivity, depression, or anxiety in the decade following his suicide attempt. Although the appellant needs to continue to remain vigilant for signs or symptoms of depressed mood, the Panel opined that the appellant had recovered from the 2012 incident. As a result, 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 fit to perform effectively the duties of the position sought, and therefore, the action of the appointing authority should not be upheld. Accordingly, the Panel recommended that the appellant be restored to the subject eligible list.

It is noted that prior to the Report and Recommendation being issued, the appointing authority presented the statement of its Fire Director, who was present at the Panel meeting. The Fire Director stated that, while the doctors of the appointing authority and the appellant had “an obligation to speak,” the appellant’s attorney was also given the opportunity to speak at the Panel meeting and he did not have that opportunity. The appellant’s attorney spoke of the appellant’s character, work ethic, and likeability. The Fire Director indicated that he wanted to have the same amount of time to address these issues. He noted that he has mentored the appellant through his employment with the City of New Brunswick and that, as a result, he knows the appellant better than anyone at the Panel meeting. The Fire Directory argued that, while the appellant is doing well now, if something were to disrupt this, it would send the appellant “out of character.” The Fire Director noted that he saw the appellant “fall completely apart” when he advised him that he did not pass the psychological examination. Moreover, the Fire Director characterized the appellant as someone who desires to be in control, listens to respond rather than learn, and seeks to get special recognition for his role on a team. He stated that, although the appellant does a good job as a fire inspector, he functions as an independent worker rather than a team player in that regard, which is what is required of a Fire Fighter. Firefighting is a team effort, and the Fire Director currently considers the appellant not to be a team player. Consequently, the Fire Director maintained that the appellant is not a suitable candidate for a position as a Fire Fighter.

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, 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 Commission has reviewed the Job Specification for this title and the duties and abilities encompassed therein and acknowledges the appointing authority's concerns regarding the appellant's past problems related to emotional regulation and stress tolerance and with his credibility, in particular regarding relaying information about his suicide attempt. However, the submissions and findings of both Drs. Sbaratta and Wall, as well as the appellant's appearance before the Panel, were thoroughly reviewed by the Panel prior to it making its Report and Recommendation. 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. The appellant discussed his suicide attempt, his hospitalization and medication, and the circumstances that led up to the incident with the Panel. Regarding the Fire Director's assertion that he was not given the same opportunity to speak as the appellant's attorney and doctor, the Commission notes that the Panel meeting is not a plenary hearing where testimony is taken, and does not require the participation of the parties' representatives or the evaluators whose reports are reviewed. Rather, although the Panel may ask a representative a question during its meeting, the meeting is for the Panel to observe and evaluate an appellant by questioning the appellant and clarifying the reports and record before it. A party's representative(s), which is ordinarily an attorney or doctor, may also speak on behalf of the party by way of the opening and closing statement. The appointing authority in this case, as would have been in all cases, was provided with that opportunity. Nonetheless, the

Fire Director has had an opportunity in his written statement to present his position. However, the Commission is not sufficiently persuaded to reject the findings of the Panel. The issues raised concerning the appellant's suitability and ability to work in a team can be addressed during the working test period. Thus, the Commission finds that the record, when viewed in its entirety, supports the findings of the Panel that the appellant is psychologically fit to serve as a Fire Fighter. 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 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 conclusion 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 D.J.Q. is psychologically unfit to perform effectively the duties of a Fire Fighter 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 her working test period, the Commission orders that appellant be granted a retroactive date of appointment to August 10, 2021, 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 29TH DAY OF JUNE 2022

Deirdre L. Webster Cobb

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