



STATE OF NEW JERSEY

In the Matter of N.W.M.,
Police Officer (S9999A),
Trenton

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-1338

Medical Review Panel Appeal

ISSUED: March 15, 2023 (BS)

N.W.M., represented by Mark Gulbranson, Jr., Esq., appeals his rejection as a Police Officer candidate by the Trenton 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 18, 2022, which rendered its Report and Recommendation on May 27, 2022. Exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Christopher Sbaratta of the Institute for Forensic Psychology (IFP), evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and characterized the appellant as “well-mannered and upbeat” but “suspicious at times, somewhat oddly related, and stiff,” and provided information that had “notable discrepancies with dates and events” compared to a previous evaluation. The appellant presented with no apparent history of mental health treatment or any serious financial problems. However, the appellant indicated that he had been disciplined three times while working for Lawrence Township Department of Public Works and that his supervisor there “held a grudge against him from a prior job.” Moreover, the appellant denied any history of arrests, but the police were once called to his home when he was involved in an argument with his father. Additionally, a former girlfriend filed a temporary restraining order against him which was “dismissed outright” because he “proved” he was in a different state when

the “alleged assault” took place. In addition to being involved in one automobile accident, the appellant reported that he had been issued three motor vehicle summonses. Dr. Sbaratta also noted that the appellant had provided contradictory and/or inconsistent information concerning his residency during the background investigation. As a result, Dr. Sbaratta did not find the appellant psychologically suitable for employment as a Police Officer.

The Panel’s report also indicates that Dr. Sarah DeMarco, evaluator on behalf of the appellant, carried out a psychiatric evaluation and characterized the appellant as cooperative and respectful during the evaluation and appearing to “answer questions and make comments in a forthright, thoughtful manner.” Dr. DeMarco noted that the appellant has been working as a full-time Correctional Police Officer since December 31, 2021.¹ Additionally, she indicated that the appellant presented without any signs of a mental health condition during the evaluation which was corroborated by collateral data and psychological testing. The appellant, however, admitted to being diagnosed with dyslexia when he was minor and having an Individualized Education Program (IEP) “throughout school,” but did not report his diagnosis² or IEP to the appointing authority because he did not want an accommodation or to be treated differently. Dr. DeMarco indicated that the appellant had no history of suspensions or behavioral problems during his education. The appellant further denied any history of psychotherapy, financial problems, or arrests, though he did acknowledge “3 or 4 motor vehicle summonses.” The appellant had no notable substance abuse history, though he had admitted to smoking marijuana “a total of two times” when he was 18. The appellant denied that he omitted any details from his application documentation, but that he struggled recalling specific dates, nor did he intentionally try to withhold information when he failed to disclose the owner of the place he was renting. The owner was the mother-in-law of the officer who was interpreting for the interview to establish his place of residence. Additionally, he claimed “he just didn’t think about it” when he inaccurately reported vehicles as passenger vehicles rather than commercial vehicles and not parking where he reported he was living during the background investigation. Moreover, the appellant described the circumstances surrounding a “loud” argument between him and his father, in which the police were called, and the allegations made by a former girlfriend who had filed for a restraining order. However, the appellant had no convictions for domestic violence. Further, Dr. DeMarco noted that the the appellant previously passed a psychological evaluation conducted by IFP and opined that providing discrepant information across several interviews and forms based on oversight/mistakes and miscommunication should not be misconstrued as an attempt to withhold information or an attempt by the appellant to present himself in an overly

¹ Agency records indicate that the appellant received a full-time temporary appointment as a County Correctional Police Officer with Mercer County effective January 29, 2022.

² The appellant had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and prescribed Ritalin and Concerta throughout high school though he denied any history of treatment during Dr. Sbaratta’s evaluation.

favorable light. Dr. DeMarco did not share the concerns raised in the report of Dr. Sbaratta and instead concluded that there was no compelling psychological reason to disqualify the appellant.

As set forth in the Panel's report, the evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The concerns of the appointing authority's evaluator centered on the appellant's providing inconsistent and/or incomplete information during the evaluation process. The appellant's evaluator did not share these concerns. The Panel focused its questioning on the issues of integrity and ethics, which are considered essential areas for individuals who work in public safety positions. The Panel was concerned that the appellant was not being forthright or was just making assumptions about what the evaluator wanted to know rather than simply providing honest responses to questions concerning his background. Further, the Panel was concerned that the appellant did not provide a reasonable explanation for failing to disclose the incident in which his mother had called the police during an argument between the appellant and his father. The Panel noted that full disclosure when asked about his background was a necessary component of the evaluation. Further, the appellant's explanation for not directly disclosing to the background investigator the nature of his relationship with the person he reported to be his landlord when his residence was being verified appeared to be neither accurate nor credible. Likewise, the Panel found the appellant not to be completely forthright with his explanation to the background investigator regarding the vehicles not being parked at the address he claimed to be his residence. The Panel emphasized that honesty and integrity are of great importance in law enforcement work. The Panel found that the numerous instances of incomplete, contradictory, and withheld information by the appellant during the application, background investigation, and evaluation process were sufficient evidence that the appellant was not suited for employment as a Police Officer. Accordingly, 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 unfit to perform effectively the duties of the position sought, and therefore, the action of the appointing authority should be upheld. The Panel recommended that the appellant be removed from the subject eligible list.

In his exceptions, the appellant indicates that he applied for a position as a Trenton Police Officer and underwent a psychological evaluation, which was conducted by Dr. David Liang of IFP whose report, dated October 23, 2020, found him psychologically fit for employment.³ However, the appellant "was not selected to

³ Dr. Liang's report is referenced in the reports of Drs. DeMarco and Sbaratta, as well as in the appellant's exceptions. Dr. Liang's evaluation occurred in August 2020 and Dr. Sbaratta's evaluation occurred in August 2021.

move forward at that time.⁴ The appellant states that he reapplied for the position and was re-evaluated by Dr. Sbaratta who, “[d]espite reviewing the same background materials as Dr. Liang,” concluded that the appellant was psychologically unfit for the position. Dr. Sbaratta’s report was dated September 23, 2021. The appellant emphasizes that, in connection with the present appeal, he underwent a third evaluation by Dr. DeMarco, who concluded that he was psychologically fit to serve as a Police Officer. The appellant maintains that he has been serving as a County Correctional Police Officer since December 2021, for which he also passed a psychological evaluation, and that his present duties are similar to that of a Police Officer. The appellant contends that he has served with distinction and has continuously demonstrated that he is psychologically fit for that position. The appellant argues that while Dr. Liang acknowledged his past disciplines, in the previous psychological evaluation, he found that the appellant had “matured considerably in recent years” and, coupled with the fact that the appellant has maintained a steady employment history with no terminations, determined that there was “insufficient evidence to suggest a pervasive pattern of poor work performance.” Likewise, regarding the appellant’s “alleged deflections in his responses,” the appellant highlights Dr. DeMarco’s findings that the “reasons for the discrepancies did not appear malicious or a clear attempt or clear attempt to withhold information.” Dr. DeMarco goes on to note that most of the “discrepant information” would eventually be disclosed in “one form or another.” The appellant offers explanations of the various “discrepancies” which the Panel set forth regarding his omission of his ADHD and dyslexia which he maintains that the question posed was whether he had any learning disabilities *and* if he attended any remedial classes to which he correctly answered he did not; the verbal altercation with his father and the “brief interaction” he had with the police who was a neighbor and friend; the nature of his relationship with his landlord which he had no “affirmative duty to disclose;” and his parking decision to park elsewhere and not to have his vehicle on a Trenton City street which was a “perfectly rational basis” to do so. The appellant submits that there was no indication that he had been hiding anything, let alone being dishonest and, accordingly he should be reinstated into the employment process.

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

⁴ Agency records reveal that the appellant was certified from the Police Officer (S9999A), Trenton, eligible list on August 12, 2020, and his name had been bypassed for appointment. However, he did not file an appeal.

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 Civil Service Commission (Commission) has reviewed the Job Specification for this title and the duties and abilities encompassed therein and finds legitimate concerns were raised by the appointing authority's evaluator concerning the appellant's honesty and integrity, necessary traits for an individual who aspires to a career in law enforcement. Contrary to the appellant's submission of Dr. DeMarco's statement that the "discrepant information" would eventually be disclosed in "one form or another," the Commission emphasizes that accurate information should have been readily offered at all points during the investigation and interview process. The Commission is not persuaded by the exceptions presented by the appellant. With regard to the appellant's assertion that he passed a previous psychological evaluation for Police Officer and is now serving in the County Correctional Police Officer title which he contends is very similar to the subject title, the Commission initially notes that, based on long standing administrative practice, psychological assessments for employment are only considered valid for a period of one year from when they are administered. *See In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008). The IFP evaluations were conducted approximately one year apart (August 2020 and August 2021), and the second evaluation found the appellant to be psychologically unsuited. Thus, there is no basis to question the second evaluation's validity with regard to a reassessment of the appellant.⁵ The Commission further notes that each psychological assessment is based upon the specific title's Job Specification for which a candidate is being considered. While the duties of a County Correctional Police Officer may be somewhat similar to those of a municipal Police Officer, as both are law enforcement titles, municipal Police Officers have a high visibility within the community and applicants for the position of municipal Police Officer are held to a high standard of personnel accountability, which must include unassailable honesty and integrity. It must be recognized that a municipal Police Officer is a special kind of public employee:

⁵ However, an appointing authority is not precluded from administering a second test within the one-year period if the circumstances of the candidate dictate such a test.

His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public . . . See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560, 566 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also *In re Phillips*, 117 *N.J.* 567 (1990).

Finally, the Commission emphasizes that, prior to making its Report and Recommendation, the Panel conducts an independent review of all of the raw data presented by the parties as well as the raw data and 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, as such, are not subjective. The Panel's observations regarding the appellant's behavioral record, employment history, responses to the various assessment tools, and 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 applicants. The Commission defers to its Panel's expert opinion regarding the appellant's suitability, and as indicated above, does not find the appellant's exceptions to the findings of the Panel persuasive. In this regard, the Commission agrees with the Panel that, in the present matter, the record demonstrates that the appellant was less than forthright during the application and evaluation process. Accordingly, the Commission cannot ratify the appellant's psychological fitness to serve as a Police Officer.

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 denies the appellant's appeal.

ORDER

The Commission finds that the appointing authority has met its burden of proof that N.W.M. is psychologically unfit to perform effectively the duties of a Police Officer 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 15TH DAY OF MARCH, 2023

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