



STATE OF NEW JERSEY

In the Matter of H.M.,
Police Officer (S9999A),
West New York

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

CSC Docket No. 2023-626

Medical Review Panel Appeal

ISSUED: May 24, 2023 (SLK)

H.M., represented by Eric Marcy, Esq., appeals his rejection as a Police Officer candidate by West New York 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 January 20, 2023, which rendered its Report and Recommendation on January 26, 2023. Exceptions and cross exceptions were filed on behalf of the parties.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Sandra Ackerman Sinclair, evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and characterized the appellant as “friendly, cooperative, and well-mannered during the interview.” The appellant reported that he had been working full time for his current employer since November 2015. Further, he stated that he had never been fired or “pushed to resign from a job.” In addition, Dr. Sinclair indicated that the appellant was arrested for Driving Under the Influence (DUI) in March 2018 and September 2018. The appellant explained that his first DUI arrest occurred after he had “a couple of drinks” with friends he drove home, and after dropping a friend off and recognizing that he was too intoxicated to drive, he attempted to pull into a stranger’s driveway. The appellant explained that in his attempt to pull into the driveway, he drove his car into a parked car. The appellant indicated that he refused to answer questions posed to him during his first arrest, which led to him pleading guilty to DUI. Regarding

the second DUI arrest, the appellant described that when he was driving home from a bar where he had been drinking with co-workers, he hit a parked car while he was turning a corner. He acknowledged that he “got really upset” and drove away from the scene of the accident. Thereafter, he was pulled over for not having his headlights on, and when asked by the officer if he was okay and to step out of the car, he admitted that he had been drinking and he failed a field sobriety test. This led to the appellant attending 16 hours of counseling and a 48 hour overnight stay at an Intoxicated Driver Resource Center (IDRC). The appellant reported that after his second DUI arrest, he initially limited himself to two drinks or less and he had not consumed alcohol since September 2021. In addition to the two DUI arrests, the appellant had been issued several motor vehicle summonses. As a result of the above concerns, Dr. Sinclair did not find the appellant psychologically suitable for employment as a Police Officer.

The Panel’s report also indicates that Dr. Gerard S. Figurelli, evaluator on behalf of the appellant, carried out a psychological evaluation of the appellant who denied experiencing any current or prior history of problems and related symptoms for several psychiatric disorders when asked specifically about those disorders. Dr. Figurelli found that the appellant presented without evidence of a significant mental health disorder, responding to several self-reporting measures in a manner that indicated that he was not currently experiencing any diagnosable psychiatric illness. Dr. Figurelli noted, however, that the appellant responded to a personality measure in a manner that indicated a profile that was not valid for interpretation. Additionally, the appellant completed a Bachelor’s degree in Criminal Justice and has been employed for eight years on a full-time basis with his current employer. Moreover, the appellant denied having any juvenile arrests. Regarding his first DUI arrest in 2018, the appellant acknowledged that he “mouthed off” to a Police Officer, and he was too intoxicated to drive. Concerning his second DUI arrest, he admitted to refusing a breathalyzer test when pulled over and he again “mouthed off” to the officer when being arrested. He indicated that in 2019, he completed 16 hours of counseling and a 48-hour overnight program through the IDRC. The appellant stated that after his second DUI, he only drank “on special occasions” until he decided to stop drinking in 2021. Dr. Figurelli noted that the appellant also received two summonses for operating a commercial vehicle while his license was suspended in 2018. The appellant denied any history of illicit drug use or other substance abuse. He admitted that his misuse of alcohol which led to the two DUI arrests reflected poor judgment. Dr. Figurelli found that the appellant acknowledged and learned from his past mistakes. Therefore, Dr. Figurelli concluded that despite the appellant’s past mistakes that emanated from immaturity, he possessed multiple personal traits that enhance and contribute to his suitability for work as a Police Officer.

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 two arrests for DUI. Although the appellant's evaluator addressed these concerns, he found the appellant to be psychologically fit to be a Police Officer. During the Panel meeting, the appellant recognized that he used poor judgment in both instances where he was arrested for DUI. However, the Panel highlighted that the appellant also stated that he continued to drink after the DUIs although he indicated that he did not go out to bars or drink and drive and only drank "socially." Additionally, the appellant reported that he incurred summonses for driving with a suspended license when he drove his father's commercial vehicle.

Based on its review and its observation, the Panel found that the appellant used very poor judgment on the two occasions at issue and put himself and others at risk when he drove while intoxicated. Further, it commented that the appellant's decision to continue to drive to a bar when he likely knew he would be drinking, after a previous arrest for a DUI, was very concerning and he had a continued risk of continued poor judgment, including future DUIs. The Panel indicated that the appellant should "maintain his sobriety and demonstrate good judgment for an extended period of time if he wishes to pursue a career in public safety." 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, while the appellant states that he understands the concerns of the Panel regarding the two DUI convictions in 2018, he highlights that there is no evidence that he has any alcohol-related problems in the last four and one-half years. The appellant argues that his recommendations from his employers who are in the West New York community should be given substantial weight. Similarly, he contends that his support from three members of the West New York Police Department, public officials from the neighboring Town of Guttenberg who know him personally, and a Licensed Professional Counselor, who is a former West New York resident, should be given substantial weight. The appellant highlights that he speaks fluent Spanish and he grew up and continues to live and work in the community. He notes that if his name is restored to the subject eligible list that he will not be guaranteed employment as he will have to go through an updated employment process and complete the police academy. Thus, he requests that his removal from the subject eligible be reversed.

In its cross exceptions, the appointing authority, represented by Angelo Auteri, Esq., argues that the appellant is presenting the same arguments that he made to the Panel. It highlights that the Panel's primary concern was the appellant's two DUI arrests and a pattern of motor vehicle infractions. Further, while the Panel acknowledged the appellant's progress regarding his sobriety, it determined that the

appellant needed to demonstrate a more prolonged period of sobriety before he can be deemed psychologically qualified to be a Police Officer. Similarly, the Panel expressed concern regarding the appellant's two summonses for operating a motor vehicle while his license was suspended. Therefore, the appointing authority submits that the appellant has not presented a background that exhibits the good character and respect for the law and adherence to the rules that the public expects from a Police Officer and there is no reason to disturb the decision to remove the appellant's name from the subject eligible list.

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 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 regarding the appellant's judgment, as evidenced by the appellant's two DUIs and his incurring summonses for driving with a suspended license. As indicated by the Panel, the risk for continued poor judgment, including future DUIs, renders the appellant not suitable for employment as a Police Officer at this time. Thus, while the Commission appreciates the appellant's efforts regarding his sobriety and his recommendations from the West New York community, the Commission is not persuaded by the appellant's exceptions as there has been insufficient time for the appellant to demonstrate that he possesses the good judgment needed to be a municipal Police Officer. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law.

Municipal Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. 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). The appellant's behavioral record contradicts these traits.

Finally, the Commission notes 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, 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 the Panel's expert opinion regarding the appellant's suitability. 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 H.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 24TH DAY OF MAY, 2023

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