

concern to the Commission, such that, it believes that a further assessment of the two doctors' reports is required

Accordingly, the Commission ordered an independent psychological assessment of the appellant's psychological fitness for duty at the time of the removal be conducted. To accomplish this, the Commission further ordered that its independent psychological evaluator, Dr. Robert Kanen, review the psychological reports in the record from Dr. Glass and Dr. Rafanello, and make a determination as to whether the appellant was psychologically fit for duty at the time of Dr. Glass' assessment, after which the parties could provide written exceptions to Dr. Kanen's report to the ALJ. Upon receipt of Dr. Kanen's report and any exceptions, the ALJ was directed to issue a new initial decision taking into account Dr. Kanen's report, as well as the previous reports of Dr. Glass and Dr. Rafanello.

In his current initial decision, the ALJ indicates that Dr. Kanen's review states that the appellant was unfit for duty at the time of he was put out of work. Ultimately, the ALJ found that, considering Dr. Kanen's report and the subsequent exceptions filed, that there was:

. . . no basis upon which to reverse or alter the findings made in the prior initial decision, and as such I adopt and incorporate those findings into this decision on remand as if set forth more fully herein. Specifically, I **FIND** that appellant was declared unfit for duty through a psychological exam on March 2, 2021 and that when appellant was put out, he was indeed unfit for duty. I further **FIND** that appellant was urged on a number of occasions to seek counseling and for one reason or another did not follow through with that recommendation.

Based on the above, the ALJ determined that such unfitness supported the imposition of removal from employment.

Upon its *de novo* review of the entire record, including a thorough review of the exceptions and reply filed, the Commission agrees with the ALJ regarding both the upholding of the charges and the penalty imposed. In regard to the charges, the ALJ, and the Commission have no basis to question the conclusions of Dr. Kanen in this matter, which are in accord with Dr. Glass' assessment (as well as substantially in accord with Dr. Rafanello's assessment). Nothing in the appellant's exceptions lead the Commission to conclude that Dr. Kanen's assessment was in error. As such, the charges regarding unfitness were properly upheld. Further, such unfitness at the time clearly supports the appellant's removal from employment. Even assuming, *arguendo*, that the appellant established he was fit for duty at a future date, given the facts and circumstances presented, the Commission finds no compelling reasons in this matter to impose a lesser penalty.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Joseph Hans.

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 28TH DAY OF JUNE, 2023



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 00059-23
AGENCY DKT. NO. 2022-1727
(ON REMAND CSR 01264-22)

**IN THE MATTER OF JOSEPH HANS,
LAKEWOOD TOWNSHIP
(POLICE DEPARTMENT).**

Charles J. Uliano, Esq., for appellant, Joseph Hans, (Chamlin Uliano and Walsh, attorneys)

Steven Secare, Esq., for respondent, Lakewood Township, Police Department, (Secare & Hensel, attorneys)

Record Closed: April 11, 2023

Decided: May 24, 2023

BEFORE **ELIA A. PELIOS, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Joseph Hans ("Hans" or "appellant") a police officer with the Camden County Police Department ("respondent," "CCPD" or "Department") appeals the Department's decision to remove him from employment for violating N.J.A.C. 4A:2-2.3(a): (1) incompetency, inefficiency or failure to perform duties; (3) inability to perform duties; (7) neglect of duty; and (12) other sufficient cause. All charges are supported by the single

specification that appellant was declared unfit for duty through a psychological exam on March 2, 2021.

Respondent issued a Final Notice of Disciplinary Action (FNDA), dated January 21, 2022, removing him from employment on that date based upon the sustained charges. Appellant appealed the FNDA to the Office of Administrative Law (OAL) on February 8, 2022 and the initial matter was assigned OAL Docket Number CSR 01264-22. That matter was heard on June 9, and June 24, 2022. The record closed at the conclusion of the second hearing date. By way of letter, dated March 17, 2022, appellant waived the 180-day rule. The record was reopened on August 3, 2022, to clarify an issue with the exhibit list and re-closed on August 15, 2022.

On November 14, 2022, I issued an Initial Decision (C-1) in the initial matter sustaining the charges and affirming the removal of appellant from employment. On December 27, 2022, the Civil Service Commission issued a decision (C-2) remanding the matter to the OAL for further assessment of the parties' experts' reports. In doing so, the commission required that an independent psychological assessment of the appellant's psychological fitness for duty at the time of removal be conducted and assigned its independent psychological evaluator, Dr. Robert Kanen, Psy.D. to review the psychological reports submitted in the initial matter by the parties' experts' and make a determination as to whether appellant was psychologically fit for duty at the time of respondent's expert's assessment.

On January 7, 2023, Dr. Kanen submitted his report (C-3) opining that appellant was unfit for duty at the time prescribed by the remand order to me. It was in turn forwarded to the parties' attorneys. On March 7, 2023 a conference call was held and a briefing schedule was agreed to for the parties to submit written exceptions to Dr. Kanen's report, as the remand order required. Counsel submitted their exceptions (C-4, C-5) and when no replies were received the record closed on April 11, 2023, as the remand order stated that no further hearing proceedings were required.

FACTUAL DISCUSSION

The summary of testimony and description of evidence provided in the prior initial decision are adopted and incorporated as if described more fully herein, as is the credibility analysis of the expert witnesses who testified at hearing.

The remand order requires that I reconsider the opinions offered by the experts having given consideration to the report of Dr. Kanen and to the exceptions to that report submitted by counsel.

Dr. Kanen presented a report which demonstrated a familiarity with the reports of Dr. Glass and Dr. Rafanello. He also demonstrated experience and understanding of the difficulties faced by both those in the law enforcement profession and by those who seek to assess and help them with psychological issues they may face.

He appeared to approach both expert opinions respectfully and observed that both were up front in acknowledging the limitations of personality testing, particularly with law enforcement, and the greater emphasis it places on behavioral analysis in assessing fitness for duty. Dr. Kanen noted repeatedly that past behavior is the best predictor of future behavior and zeroed in both on appellant's traumatic past and his repeated and persistent issues with time and attendance – noting the rippling impact time and attendance issues can have on morale, discipline, supervision, and management.

Dr. Kanen noted and placed emphasis on the statements made by appellant regarding his motivation and enthusiasm for the job and his repeated failure to follow through on addressing and seeking help for improving the issues he faced, specifically seeking and maintaining therapy. He also was taken aback by the hostility demonstrated by appellant and directed toward Dr. Glass and noted that such exhibitions were unusual for a law enforcement officer referred a psychological fitness for duty evaluation. He noted that when employment is implicated most tried to present well for their evaluation, in his experience.

Returning again to appellant's failure to follow through with therapy and

unwillingness to work on his behavior, Dr. Kanen ultimately concluded that appellant was unfit for duty at the time directed by the remand order.

Appellant took exception to this finding and raised concerns that Dr. Kanen may have considered matters beyond the scope of time prescribed, but also took issue with Dr. Kanen's ignoring of certain activities by appellant after that time period. Respondent noted that Dr. Kanen's opinion supported the position put forth by the appointing authority.

Having reconsidered the opinions offered by the experts with the benefit of the report of Dr. Kanen and to the exceptions to that report submitted by counsel I remain better persuaded by the opinion of Dr. Glass, despite the credibility issues identified in the prior initial decision and shared by the Civil Service Commission. Dr. Kanen's independent analysis supports the opinion of Dr. Glass (and that expressed on cross-examination by Dr. Rafanello) that appellant was unfit for duty at the time he was put out of work.

This amplification, along with the exceptions filed, lead me to no basis upon which to reverse or alter the findings made in the prior initial decision, and as such I adopt and incorporate those findings into this decision on remand as if set forth more fully herein. Specifically, I **FIND** that appellant was declared unfit for duty through a psychological exam on March 2, 2021 and that when appellant was put out, he was indeed unfit for duty. I further **FIND** that appellant was urged on a number of occasions to seek counseling and for one reason or another did not follow through with that recommendation.

To the extent that I made findings in the prior initial decision as to whether appellant was fit to return at the time of the hearing, the commission made clear in the remand order that it was not interested in the appellants current psychological fitness. To the extent that such discussion and findings were part of the prior record they are incorporated into this decision as well but are done so without amplification, consideration as to Dr. Kanen's report or any further discussion.

CONCLUSIONS OF LAW

The respondent has charged appellant with violations of N.J.A.C. 4A:2-2.3(a): (1) Incompetency inefficiency or failure to perform duties; (3) inability to perform duties; (7) neglect of duty; and (12) other sufficient cause. All charges are supported by the single specification that appellant was declared unfit for duty through a psychological exam on March 2, 2021.

After complying with the remand order and reconsidering Dr. Glass and Dr. Rafanello's reports, alongside the report of Dr. Kanan and the exceptions by the parties to that report, there has been no change to the findings of fact made in the prior initial decision. Considering the charges proffered and the discussion of the appropriate standards of consideration described in the prior initial decision and incorporated and adopted as if set forth more fully herein, I **CONCLUDE** that it is appropriate that the legal conclusions also remain unchanged and be adopted and incorporated herein as well. Therefore, I again **CONCLUDE** that the charges of incompetence, inefficiency, or failure to perform duties and neglect of duty must be **DISMISSED**, and that the charges of inability to perform duties and other sufficient cause must be **SUSTAINED**.

PENALTY

After complying with the remand order and reconsidering Dr. Glass and Dr. Rafanello's reports, alongside the report of Dr. Kanan and the exceptions by the parties to that report, there has been no change to the findings of fact or the conclusions of law made in the prior initial decision. Considering the charges proffered and the discussion of the appropriate standards of consideration described in the prior initial decision and incorporated and adopted as if set forth more fully herein, I **CONCLUDE** that it is appropriate that the penalty recommendation also remains unchanged and be adopted and incorporated herein as well. Therefore, I again **CONCLUDE** that the respondent has proven, by a preponderance of credible evidence, that appellant is unfit for duty and thus does not have the ability to properly perform his duties. I further conclude that respondent has presented the basis for appellant's removal from employment, and that such removal should be **AFFIRMED**.

ORDER

The appointing authority has proven by a preponderance of credible evidence the charges against appellant with violations of N.J.A.C. 4A:2-2.3(a)3 (inability to perform duties) and N.J.A.C. 4A:2-2.3(a)12, (other sufficient cause). I therefore **ORDER** that these charges be and are hereby **SUSTAINED**. Furthermore, I **ORDER** that the remaining charges be **DISMISSED**. I finally **ORDER** that the penalty of removal be and is hereby **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 24, 2023
DATE



ELIA A. PELIOS, ALJ

Date Received at Agency: May 24, 2023

Date Mailed to Parties: May 24, 2023

EAP/caa

APPENDIX

WITNESSES

None

EXHIBITS

For the Court:

- C-1 Initial Decision – CSR 01264-22
- C-2 Order of Remans
- C-3 Report of Dr. Robert Kanen, Psy.D.
- C-4 Exceptions by appellant
- C-5 Exceptions by respondent