



STATE OF NEW JERSEY

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

In the Matter of F.R., Fire Fighter
(M1848W), Linden

CSC Docket No. 2022-3063

Medical Review Panel Appeal

ISSUED: July 19, 2023 (SLK)

F.R., represented by Michael L. Prigoff, Esq., appeals his rejection as a Fire Fighter candidate by Linden and its request to remove his name from the eligible list for Fire Fighter (M1848W)¹ 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 5, 2023, which rendered its Report and Recommendation on the same date. Exceptions and cross exceptions were filed on behalf of the parties. It is noted that the appellant, his attorney, and his doctor were present at the Panel meeting, as well as the appointing authority’s attorney.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Daniel Schievella, evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and found evidence of problems with respect to candor and truthfulness in self-reporting as the appellant was vague regarding disclosing aspects of his personal history and was often contradictory, which required re-questioning him to clarify his background. Dr. Schievella noted that the appellant “failed his application with the Linden Police Department” because he did not disclose his summons for trespassing on a college campus, underage possession of alcohol, vomiting in a men’s room at school after a night of

¹ It is noted that the eligible list promulgated on March 29, 2019 and expired on April 19, 2023.

partying, and urinating on a classmate's clothes as a prank. During the present interview, the appellant disclosed the trespassing summons and vomiting. Further, he acknowledged, after Dr. Schievella's prompting, the urination incident but maintained that the person thought it was okay, which resulted in them becoming closer friends. Moreover, Dr. Schievella indicated that when he asked the appellant to reflect on his past, the appellant expressed regret over not continuing football rather than his behavior while intoxicated. Additionally, when redirected, the appellant presented little remorse, saying that he missed the partying and great friends, but he had moved on. Dr. Schievella also questioned the appellant about his work since he graduated in 2016. The appellant first indicated that he was a substitute teacher and teaching assistant for the Linden School System. However, he had not worked in either position since COVID-19. Further, the appellant provided that he previously worked for Linden Recreation, but had not done so for two years, but he had returned to the recreation center with virtual learning. Additionally, the appellant stated that he assisted his father with his plumbing business, but the last time he worked with his father was installing a heater a month ago. The appellant also indicated that he sold clothes, but he had stopped that due to the pandemic. In conclusion, Dr. Schievella stated that it remained unclear if the appellant's lack of clarity in self-reporting was related to him having ADHD during his elementary and high school years, or whether his vagueness and evasions were related to character flaws. Regardless, Dr. Schievella found the appellant to be a poor historian, lacking in candor, and would likely prove problematic in understanding and following the rules and procedures assigned to him. As a result, Dr. Schievella concluded that the appellant was not psychologically suitable for employment as a Fire Fighter.

The Panel's report also indicates that Dr. Sandra Morrow, evaluator on behalf of the appellant, conducted a psychological evaluation and characterized the appellant as having the ability to complete the training required of a Fire Fighter as such training was like sports training, which the appellant was familiar with, where demonstration and practice comprise the majority of instruction, written materials are supplemental, and oral instructions are given simultaneous to the demonstrations. Dr. Morrow asserted that with the appellant's disability, a hands-on career was appropriate for the appellant. Further, Dr. Morrow found that firefighting would be a good fit for the appellant as he is strong, athletic, versed in team work, and oriented toward physical tasks as demonstrated by his proclivity for working in recreation and professional driving. Dr. Morrow noted that after the appellant's first year of college where he experienced the negative consequences of experimenting with alcohol, he had not had difficulties with substance abuse. Further, there were no symptoms of substance abuse appearing on any of his psychological tests. Additionally, Dr. Morrow highlighted that although the appellant was born with a learning disability, his excellent academic record revealed that he could overcome any obstacles if presented. Dr. Morrow also indicated that the appellant's facility in three languages, his cooperative personality, and his

passion for firefighting would be an asset to the department. As a result, Dr. Morrow concluded that within a reasonable psychological certainty, the appellant was fit to become a Linden 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 candor and truthfulness in self-reporting. The appellant's evaluator cited the appellant's athleticism and being versed in team work and overcoming obstacles as positive traits of the appellant. During the meeting, the Panel indicated that the appellant had been employed as an Uber and Lyft driver since January 2022, where the appellant denied that there had been any complaints against him. He reported high ratings with both companies. The appellant also indicated that he continued to work part-time for his father as a plumbing assistant and to work for the Linden Board of Education as a substitute teacher and aide, although he had not worked in such capacity since he began working for Uber and Lyft. Concerning the incidents that the appellant had during his first semester in college, the Panel noted that the appellant indicated that he did not report the urination because he was embarrassed, he paid a fine for a public drinking summons and he did not have to appear in court nor was he arrested, and he had no other incidents when he transferred to a New Jersey college. The Panel highlighted that the appellant had one motor vehicle moving violation in 2015 and no other motor vehicle violations since; his license had never been suspended; he had good credit; he had no criminal history; and he had no addiction history. The Panel presented that the appellant was classified as having a communication disorder in middle and high school, where he received speech therapy and placed in resource classes, which ended in 11th grade. The appellant continues to receive extended time on testing based on documentation from high school. However, the Panel did not find the foregoing as disqualifying factors. Rather, it noted that although Dr. Schievella had concerns with the appellant's candor, the appellant's presentation before the Panel was consistent with Dr. Morrow's impression of the appellant. Therefore, taking into consideration the psychological reports, the appellant's presentation before the Panel, the test results and procedures and the appellant's behavioral record in light of the Job Specification for Fire Fighter, the Panel found that the appellant was psychologically fit to perform effectively the duties of the position sought, and therefore, concluded that the action of the appointing authority should not be upheld. Accordingly, the Panel recommended that the appellant be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by Robert J. Merryman, Esq., asserts that the Panel disregarded the appellant's lack of candor as highlighted by Dr. Schievella's report. It maintains that the Panel gave little attention to the fact that the appellant had been rejected as a Police Officer candidate by Linden for failing to disclose some of the incidents that the appellant was questioned about by Dr. Schievella and the Panel. Further, it emphasizes that

the appellant failed to disclose the urination incident until prompted by Dr. Schievella. Additionally, Dr. Schievella was concerned that the appellant had little remorse about the incidents that involved his alcohol use. The appointing authority reiterates that the appellant intentionally did not disclose these incidents on his Linden Police Department application, which led to his falsification removal on that eligible list. Moreover, it asserts that the appellant admitted that “when it suits his interests he will not hesitate to provide inaccurate information.” The appointing authority contends that the appellant’s lack of candor is very concerning as a Fire Fighter must display sound judgment, follow routine and repetitive procedures, use logical thinking in emergencies, understand instructions, and apply knowledge in stressful conditions. The appointing authority also presents that Dr. Schievella’s report indicates that the appellant’s score on the Magical Ideation Scale as being elevated with seven errors and “he did not comprehend the instructions or had difficulty with grammar and syntax,” which the Panel did not address although it acknowledged that the appellant receives extra time on tests. It contends that the Panel downplayed the difficulties that the appellant displayed in testing and how this may be reflective of the difficulty that he will have in following both oral and written instructions. Therefore, the appointing authority submits that the Panel’s recommendation must be rejected.

In his cross exceptions, the appellant asserts that the appointing authority is repeating the errors of Dr. Schievella’s analysis. He presents that he omitted the urination incident on his application to be a Police Officer almost five years ago, but he did not do so in the instant matter. The appellant states that the incident was disclosed on his application to be a Fire Fighter, and he candidly explained to the Panel that he was embarrassed to disclose it in his police application and he candidly discussed the incident with the evaluators. Further, the appellant contends that, contrary to the appointing authority’s assertions, he did express remorse for these college-age incidents to Dr. Schievella and the Panel. Additionally, he states that it is a complete fabrication that he “admitted that when it suits his interests he will not hesitate to provide inaccurate information.” Finally, regarding the Magic Ideation Scale, the appellant emphasizes that the Panel had noted his learning disability and that Dr. Morrow reported that he earned a college degree with high grades and several academic scholarships as better demonstrating his ability to handle the learning components of being a Fire Fighter. Therefore, the appellant maintains that the Panel’s recommendation should be adopted.

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 Civil Service Commission (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 with candor about college-age incidents on his Linden Police Officer application. However, the submissions and findings of both Drs. Schievella and Morrow, 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. Referring to the appellant's candor, the appellant did disclose his college-age incidents on the present application for a Fire Fighter position with Linden, and he did explain to the Panel that he was embarrassed about the urination incident as to why he did not disclose it on his prior Linden Police Officer application. Regarding the appointing authority's assertion that the appellant showed little remorse about the alcohol use incidents, the record indicates that the appellant learned from these incidents as he has not had a similar incident since he transferred to college in New Jersey, and the Panel highlighted that that the appellant had one motor vehicle moving violation in 2015 and no other motor vehicle violations since, his license had never been suspended, he has good credit, he has no criminal history, and he has no addiction history. Moreover, the appellant denies that he admitted that when it suits his interests, he will not hesitate to provide inaccurate information, and the Panel made no such finding. Finally, regarding the appointing authority's concern about the appellant's learning disability, the appellant's academic achievement demonstrates his ability to overcome obstacles and his ability to learn. 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 issues concerning the appellant's candor, behavior, or ability to learn can be addressed during his working test period.

Therefore, having considered the record, including the Job Specification for Fire Fighter and the duties and abilities encompassed therein, 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 F.R. is psychologically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that the eligible list for Fire Fighter (M1848W), Linden, be revived and the appellant's name be restored. 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 his working test period, the Commission orders that the appellant be granted a retroactive date of appointment to February 9, 2022, 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 19TH DAY OF JULY, 2023

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