



STATE OF NEW JERSEY

In the Matter of J.D., Correctional
Police Officer (S9988A).
Department of Corrections

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

CSC Docket No. 2021-1335

List Removal Appeal

ISSUED: June 7, 2023 (DASV)

J.D. appeals the request by the Department of Corrections (DOC) to remove his name from the Correctional Police Officer (S9988A) eligible list for medical unfitness to perform effectively the duties of the position.

By way of background, the appellant, a nonveteran, took the open competitive examination for Correctional Police Officer (S9988A), achieved a passing score, and was ranked on the resulting eligible list. It is noted that the eligible list promulgated on June 27, 2019 and expired on June 26, 2021. The appellant’s name was certified by the DOC. In disposing of the certification, the DOC removed the appellant’s name due to “Failure of Medical Exam.” Specifically, in a letter dated February 24, 2021, the DOC informed the appellant that the failure was because he had a “Corrected Vision Acuity RT 20/40 LT 20/30 Bilateral 20/25 Keratoconus.”¹

On appeal to the Civil Service Commission (Commission), the appellant indicates that he received his glasses and is forwarding the “correct documents” “regarding the correction of [his] vision.” The appellant presents a February 2021 diagnosis from another personal optometrist, stating that he has uncorrected visual acuity of 20/30 in the right and left eye and corrected visual acuity of 20/20 in the right and left eye. It is noted that, while the appellant’s personal optometrist in January 2021 indicated that his vision would not be 20/20 with glasses, he was found to have a corrected bilateral visual acuity of 20/25 at that time.

¹ Keratoconus is also referred to as conical cornea.

In response, the DOC wishes to stand by its original determination that the appellant is not medically qualified. It indicates that, pursuant to the DOC's medical standards, visual acuity must be correctable to 20/30 and "may not exceed 20/100 uncorrectable, per eye." The DOC further maintains that visual acuity and sharp observation are required to effectively perform the duties of a Correctional Police Officer and individuals are required to obtain medical clearance. In support of its position, it submits documentation relating to the appellant's pre-appointment visual medical examination and a letter, dated April 28, 2021, from Dr. Francisco Javier Villota. Dr. Villota indicates that, upon examination, the appellant was found to have corrected vision of 20/40 in his right eye. He further states that "keratoconus is a non-inflammatory disorder of the cornea of unknown etiology . . . and is characterized by progressive corneal complications leading to visual impairment. In conclusion, at this time [the appellant] does not meet the full vision standards of the [New Jersey] DOC as per: **[New Jersey] DOC Medical Standards for Corrections Trainees and Parole Officer Recruits. Section 2a: EYES, states that 'Visual acuity must be no less than 20/10 [sic] uncorrected to 20/30 corrected both eyes.'**" Thus, "[d]ue to his decreased visual acuity on his right eye, [the appellant] does not meet the required visual standard as set forth by the NJDOC."

It is noted that, in a previous case, the Commission recommended that the DOC take steps to clarify the wording of its medical standards so that there would be no confusion interpreting the visual acuity requirements. Specifically, in *In the Matter of D.S.* (CSC, decided May 22, 2019), the DOC removed D.S. from the Correctional Police Officer (S9988V) eligible list, as it asserted that he did not meet the visual acuity requirements for the position. On appeal, the appellant's case was referred to the Medical Examiner's Panel (Panel), which found that the appellant had a significant visual impairment of his right eye. However, the Panel determined that clarification was needed from the DOC regarding its minimum visual acuity requirements. In that regard, the New Jersey DOC Medical Standards for Corrections Trainees and Parole Officer Recruits required that a corrections trainee's "visual acuity must be no less than 20/100, uncorrected to 20/30 corrected both eyes." In response to the appeal, the DOC had indicated that the standard was "visual acuity must be correctable to 20/30 and may not exceed 20/100 uncorrectable, per eye." Thus, the Panel determined that if the medical standards are for both eyes, then the appellant should be considered physically capable of undergoing training and performing the essential functions of a Correctional Police Officer. However, if each eye must meet the vision requirement, then the Panel concluded that the appellant's significant right visual impairment rendered him medically unqualified for the position. In response to the Panel's request for clarification, the DOC indicated that visual acuity must be correctable to 20/30 in both eyes used together. Based on the recommendation of the Panel, the appellant thus met the minimum requirement since for both eyes with correction, the appellant was found to have visual acuity of 20/25 (near) and 20/22 (far), and in his first examination with a personal optometrist,

he was found to have visual acuity of 20/20. Accordingly, the Commission granted the appellant's appeal.

In the instant matter, the DOC once again was asked to clarify its medical standards and to also submit the New Jersey DOC Medical Standards for Corrections Trainees and Parole Officer Recruits in effect at the time of the appellant's removal from the subject eligible list with an explanation as to whether the standard of a corrected vision of 20/30 is for each eye or both eyes used together. In reply, the Custody Recruitment Unit states that it had forwarded the matter for administrative review and response as the unit did "not possess the credentials or knowledge of visual acuity to clarify the medical standards on behalf of NJDOC." However, despite follow-up inquiries, no response has been received.

CONCLUSION

N.J.A.C. 4A:4-6.5(a) provides in relevant part that an appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical reasons which would preclude the eligible from effectively performing the duties of the title. *N.J.A.C.* 4A:4-6.3(b) indicates that in examination and selection appeals, the appellant shall have the burden of proof, except for medical and psychological disqualification appeals, where the appointing authority shall have the burden of proof.

Moreover, as set forth in the Job Specification, a Correctional Police Officer is responsible for the appropriate care and custody of inmates, which would include patrolling assigned areas and assuring that contraband articles are not concealed on the bodies of the inmates or in any part of the institution. Additionally, an incumbent must make note of suspicious persons and conditions and observe everything significant that takes place within sight and hearing of his or her post. The foregoing responsibilities clearly demonstrate that visual acuity is essential to perform the duties of the position.

In a prior matter, the DOC had clarified that a Correctional Police Officer candidate must have a corrected visual acuity of 20/30 for both eyes used together. Additionally, the Panel had noted that having a visual acuity of at least 20/30 was a reasonable standard. In the present matter, the DOC was once again requested to clarify the standard as the appellant was removed from the subject eligible list due to having a corrected reading of 20/40 in the left eye but had a bilateral reading of 20/25. However, no response was received. Since the DOC previously clarified the standard as corrected visual acuity of 20/30 for both eyes used together and the appellant had a 20/25 corrected bilateral visual acuity on his pre-appointment visual medical examination, a corrected bilateral visual acuity of 20/25 in January 2021, and a corrected visual acuity of 20/20 in the right and left eye in February 2021, the Commission finds that the appellant meets the minimum visual requirement of 20/30

and should be considered physically capable of performing the essential functions of a Correctional Police Officer. As such, the appointing authority has not presented sufficient justification for the removal of the appellant from the subject eligible list. Accordingly, the Commission grants the appellant's appeal.

Nevertheless, given the passage of time and Dr. Villota's description of the appellant's condition of keratoconus that it is "characterized by progressive corneal complications leading to visual impairment," the DOC may direct that the appellant be administered another eye examination upon its updated background check of the appellant. Should the appellant's bilateral reading meet the minimum of 20/30 for both eyes used together, the DOC cannot remove the appellant from the subject eligible list based on visual acuity. The Commission also reiterates its prior recommendation. The DOC should clarify the wording of the medical standards as it pertains to visual acuity so that the reference to "must be no less than 20/100, uncorrected to 20/30 corrected both eyes" means both eyes measured together and not both eyes used individually. If the latter is the case, it should so state.

ORDER

The Commission finds that the appointing authority has not met its burden of proof that J.D. is medically unfit to perform effectively the duties of a Correctional Police Officer and, therefore, the Commission orders that the Correctional Police Officer (S9988A) eligible list 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 successful completion of his working test period, the Commission orders that appellant be granted a retroactive date of appointment to February 22, 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, except the relief enumerated above.

This is the final administrative determination in the matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7TH DAY OF JUNE, 2023

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