



STATE OF NEW JERSEY

In the Matter of M.T.,
Police Officer (S9999A),
Garfield

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

CSC Docket No. 2023-679

Medical Review Panel Appeal

ISSUED: August 2, 2023 (JET)

M.T., represented by Joshua H. Reinitz, Esq., appeals his rejection as a Police Officer candidate by the Garfield 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 March 9, 2023, which rendered its Report and Recommendation on March 12, 2023. Exceptions were filed on behalf of the appellant. It is noted that the appellant, his attorney, and his doctor were present at the Panel meeting, as well as one of the appointing authority's doctors.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Han Zhang Liang, evaluator on behalf of the appointing authority, conducted a pre-employment psychological examination of the appellant and characterized him as respectful; defensive and strategic in his responses; and appearing to display poor judgment. Dr. Liang indicated that the appellant had a history of alcohol use, and there was concern with respect to his attention to safety and integrity. He found that the appellant's history included a 2019 arrest for Driving Under the Influence (DUI), when the appellant crashed his vehicle into a tree, left the scene of the accident, and nearly struck a Fire Fighter while attempting to leave the scene. Dr. Liang noted that the appellant attempted to minimize the incident and appeared to underreport the number of alcoholic beverages he consumed prior to operating the vehicle, especially given that his blood alcohol level (BAL) was 0.12, which Dr. Liang observed

was significantly higher than the legal limit. Moreover, Dr. Liang opined that, since the appellant was employed at that time as a Senior Correctional Police Officer, he should have been aware of the higher standard of conduct that is required of law enforcement officers. Dr. Liang indicated that the appellant, in order to continue employment with the Department of Corrections, was required to complete a 30-day inpatient alcohol rehabilitation program, but the appellant believed he did not need such treatment and he only completed the program since it was required by the Department of Corrections. The appellant's history also included four motor vehicle accidents, three of which he was found at fault, including a "roll-over" when he lost control of his truck; sideswiping another vehicle and causing the other driver to spin out on the road; and ongoing civil litigation issues for injuries sustained in the accident. Dr. Liang found that such a history reflects significant concerns with respect to the appellant's impulsivity and attention to safety, and that he presents an undue psychological liability to the appointing authority.¹ As a result of these concerns, Dr. Liang did not find the appellant psychologically suitable for employment as a Police Officer.

The Panel's report also indicates that Dr. Daniel Gollin, evaluator on behalf of the appellant, carried out a psychological examination. Dr. Gollin stated that a detailed interview was conducted of the appellant, and the appellant had been open and forthcoming regarding his DUI arrest, treatment, and history of previous motor vehicle accidents. Dr. Gollin noted that the appellant's history of alcohol use did not appear to indicate the presence of an ongoing substance use disorder, when taking into account the isolated incident of attempting to drive while under the influence of alcohol. Dr. Gollin indicated that the appellant's overall presentation and objective testing showed that the appellant would likely avoid repeating prior mistakes, would seek to impress his superiors, and seek to correct any behavior that might embarrass them. Dr. Gollin found that the appellant's ongoing employment as a Senior Correctional Police Officer, both prior to and after his DUI arrest, had otherwise been "spotless," and his supervisors provided "glowing" recommendations. Dr. Gollin concluded that, within a reasonable degree of psychological certainty, there was no compelling psychological reason to disqualify the appellant for a Police Officer position.

¹ Dr. Liang indicated that the appellant scored low in the Social Adjustment section on the Candidate and Officer Personnel Survey-Revised (*COPS-R*) psychological test, reflecting that he is less effective at navigating social requirements; was elevated on the Antisocial Activities and Substance Abuse scales, which indicate a lack of maturity, "someone who is likely to act first and think afterwards, a risk of future behavior of an antisocial nature, and past/current substance abuse with the potential for abuse in the future, either for recreational or stress reduction purposes." On the Personality Assessment Inventory (*PAI*) psychological test, the appellant was elevated on the Positive Impression Management scale. Dr. Liang stated that the appellant responded in such a defensive and minimizing fashion that his test profile could not be used to rule out the presence of counterproductive traits and characteristics, and he denied even ubiquitous human shortcomings and/or flaws. Dr. Liang stated that such a score is found in less than 1% of incumbent Police Officers, and such a self-appraisal is implausible. As such, the *PAI* test profile was deemed indeterminate and no objective evidence of psychopathology or emotional stability could be obtained from it.

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 DUI, lack of insight into the need for treatment, risk of future problems with alcohol use, the appellant's history of motor vehicle accidents, and the appellant's psychological testing results, which cited to elevations associated with impulsivity, antisocial activities, and substance abuse. The appellant's evaluator did not share these concerns. Upon review, the Panel opined that although the appellant's DUI, in an of itself, did not establish that the appellant had a history of substance abuse problems as he was not issued a summons for any of the motor vehicle accidents and there was no indication of any impulsivity and antisocial activities, it was concerned about the appellant's description of events with respect to the DUI. In this regard, the Panel reviewed the appellant's background investigation which contained information taken from police records. The Panel noted that the Fire Fighter who was at the scene described the appellant as "fleeing and nearly striking him and his vehicle," and when the Fire Fighter encountered him a second time, he perceived him as "attempting to leave the scene." The appellant had stated to the State Trooper that "he had not been drinking" but eventually told him the truth after he tested positive on the breathalyzer. Moreover, the Panel indicated that the appellant did not ask the Fire Fighter to call the police. As such, the Panel did not find the appellant's "current account of attempting to leave the scene in order to call the authorities as credible," and thus, it raised concerns with respect to the appellant's integrity and judgment. Accordingly, the Panel determined that based on 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, it concluded that the action of the appointing authority should be upheld. Therefore, the Panel recommended that the appellant be removed from the subject eligible list.

In his exceptions, the appellant argues that the Panel made clear errors, and thus its recommendations should not be adopted, or alternatively, he should be referred for an independent evaluation. Initially, the appellant indicates that the Panel's report in the "attendance" section omitted the name of one of the members of the Panel, "who ostensibly was part of the review process," which shows a lack to attention to details and calls into question the accuracy of the report. The appellant adds that, although the appointing authority has the burden of establishing the appellant's unsuitability, the Panel did not compare the differences with respect to the doctors' opinions in the report. The appellant explains that his doctor appeared at the hearing, and the appointing authority was represented by a doctor who did not examine the appellant and did not provide a substantive opinion to counter Dr. Gollin's evaluation. The appellant maintains that the Panel also failed to address the doctors' separate interpretations of the psychological testing. The appellant contends that Dr. Gollin's report concluded that Dr. Liang's evaluation contained

significant flaws and an incorrect conclusion. In this regard, the appellant states that, although Dr. Gollin concluded that he was a suitable candidate, and the Panel determined that the appointing authority's reasons for removing him were unsubstantiated, rather than endorsing either opinion provided by the parties' doctors, the Panel found that none of the factors provided were of concern. Specifically, the appellant contends that the Panel indicated that the DUI itself was not a concern, it was satisfied with the appellant's answers pertaining to treatment, and it did not find that he had a substance abuse problem or was at risk for antisocial behavior or future substance abuse problems. The appellant maintains that, rather than being recommended for employment when the Panel did not accept the appointing authority's rationale, the Panel inappropriately determined that he was unfit based on how it perceived his answers to the questions pertaining to the 2019 DUI arrest. The appellant states that the Panel relied on Dr. Liang's conclusions, which paraphrased and summarized a background report from a Garfield Police Officer who investigated the appellant. The information was not taken directly from a police report or a sworn witness statement. The appellant argues that such information constitutes "triple hearsay" with respect to the accuracy of the reports.

The appellant maintains that the pertinent facts are that in 2019, while off duty and out of State, the appellant was involved as the driver in an accident that damaged his vehicle approximately one mile from the cabin where he was staying. The appellant was eventually arrested and submitted to a breathalyzer that established a BAL that was over the legal limit, and subsequent to the arrest, he entered into a diversionary program. The appellant states that he complied with all of the conditions of the program; completed both inpatient and outpatient treatment; the DUI was dismissed; and he received no disciplinary action from the Department of Corrections. The appellant states that the Panel based its conclusion on the discrepancies pertaining to what occurred between the time of the accident and the time of the arrest. The appellant adds that the Panel's reliance on the description provided by the Fire Fighter is misplaced, and it chose to rely upon unreliable information that was largely unrelated to the charges against the appellant. Additionally, the appellant asserts that the Fire Fighter's perception is not an accurate reflection of what the appellant told the Panel. In this regard, the appellant maintains that he stated to the Panel that he "was unable to get the vehicle in a gear other than reverse" due to the damage to the vehicle. The appellant explains that the inability to shift made the Fire Fighter, who was behind the car, believe that he was going to strike the Fire Fighter with his vehicle. The appellant indicates that he was in the woods with no way to contact authorities, and he was not attempting to flee. Rather, he asserts that he was attempting to return to the cabin to alert authorities. The appellant admits that he conceded to the Panel that he did not tell the State Trooper that he was drinking, but as Dr. Gollin opined, such behavior is not inconsistent with intoxication, and the Panel found that he does not have a substance abuse issue. Moreover, the appellant states that he acknowledged at the police station that he consumed alcohol without being asked.

Finally, the appellant argues that his suitability for employment is demonstrated by his current employment as a Senior Correctional Police Officer for over four years. The appellant contends that “[i]n that role he has passed multiple psychiatric/psychological examinations from multiple doctors and in all, except for the one administered by Dr. Liang, he was found psychiatrically and psychologically a good candidate for law enforcement employment.” The appellant states that he has served with distinction without any disciplinary infractions, and he operates State-issued vehicles on a regular basis. The appellant adds that his suitability is further demonstrated by the appointing authority’s investigation report. In this regard, the investigation report includes a report from a detective, which is noteworthy with respect to the professionalism shown by the appellant. Moreover, the Panel did not discuss any of the recommendations provided by other law enforcement officers and supervisors in the Department of Corrections, as well as from civilians. Rather, the appellant emphasizes that the Panel chose to “rely upon perceived inaccuracies with an incident for which it lacked any precise knowledge.” The appellant contends that, neither the Panel nor the appointing authority’s doctor interviewed witnesses, reviewed firsthand accounts, viewed dash or bodycam footage, or even read summary police reports from the agency that conducted the investigation. Rather, the appellant submits that the Panel determined that he made inaccurate, minimizing statements; drew conclusions without proper evidence; made mistaken interpretation; and utilized faulty premises as a basis for the denial. Therefore, the appellant maintains that he should be restored to 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 rules 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 the 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, which are necessary traits for an individual who aspires to a career as a Police Officer. As set forth below, the Commission is not persuaded by the exceptions submitted by the appellant and finds no reason to refer him for an independent psychological evaluation. Initially, the appellant's claim that a Panel member was not listed in the Panel's report in the "attendance" section is not in error because the doctor is a member of the Panel. His name is noted on the report and need not be in the "attendance" section. With respect to the appellant's claim that Dr. Liang was not present for the March 9, 2023 Panel meeting, and another doctor, who did not personally evaluate the appellant appeared instead, such information does not change the outcome of this matter. It is noted that Dr. Liang is an associate psychologist of the Institute of Forensic Psychology (IFP). Dr. Matthew Guller is a principal psychologist of IFP and attended the Panel meeting as a representative of the appointing authority. As such, the fact that Dr. Guller appeared at the Panel meeting does not show that an error occurred as Dr. Liang's report was provided to the Panel. The Commission finds that such action is not procedurally at odds with the method in which the Panel makes its evaluations or issues its reports. Thus, the appellant's claim in that regard is without merit.

Moreover, with regard to the appellant's contention that he passed previous psychological evaluations as a Correctional Police Officer, which he contends is 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).² The appellant states that he has been serving as a Correctional Police Officer for over four years, and the second evaluation, which was conducted for the subject Police Officer position, found the appellant to be unsuitable. Thus, there is no basis to question the current evaluation's validity with regard to a reassessment of the appellant for another position. More significantly, the Commission emphasizes 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 Senior Correctional Police Officer may be somewhat similar to those of a municipal Police Officer, as both are law enforcement titles, a corrections environment is very structured and regimented while a Police Officer in the community acts with a relative degree of independence and flexibility and good judgment is paramount. Moreover, municipal Police Officers have a high visibility

² 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.

within the community and applicants for the position are held to a high standard of personal accountability, which must include unassailable honesty and integrity. It must be recognized that a municipal Police Officer is special kind of public 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 the 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 (1996). See also *In re Phillips*, 117 N.J. 567 (1990).

Under these circumstances, the Commission rejects the appellant's argument that the appointing authority and the Panel's reports have mischaracterized him with respect to his judgment and integrity. It is noted that, although the appellant challenges the Panel's findings as he is currently serving in a law enforcement position, he has not successfully persuaded the Commission that the negative aspects of his undisputed behavioral record renders him psychologically unfit for the position of Police Officer as determined by the Panel. The Commission emphasizes that, prior to making its Report and Recommendation, the Panel conducts an independent review of all 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. Thus, contrary to the appellant's exceptions, the Panel considered the opinions of the parties' evaluators and all documents in the record. Moreover, the Panel's observations regarding the appellant's behavioral record and 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 addition, the recency of the appellant's involvement in the 2019 DUI, as well as his driving record, cannot be ignored pursuant to *N.J.A.C.* 4A:4-4.7(a)1 and *N.J.A.C.* 4A:4-6.1(a)9. In that regard, removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the*

Matter of Yolanda Colson, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). It is noted that the appellant's ability to drive is not the issue, but rather, his driving history reflects a disregard for the laws which is incompatible with the duties of a law enforcement officer given the extent and recent nature of his infraction. Accordingly, based on the foregoing, the Commission cannot ratify the appellant's psychological suitability to serve as a Police Officer.

Therefore, having considered the record, including the Job Specification for Police Officer, 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 conclusions 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 M.T. 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 2ND DAY OF AUGUST, 2023

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