



STATE OF NEW JERSEY

In the Matter of F.T., Police Officer
(M0029D), Clifton

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

CSC Docket Nos. 2024-1986

List Removal Appeal

ISSUED: January 15, 2025 (DASV)

F.T., represented by Theresa Richardson, Esq., appeals his rejection as a Police Officer candidate by Clifton and its request to remove his name from the eligible list for Police Officer (M0029D) on the basis of psychological unfitness to perform effectively the duties of the position.

The relevant facts are as follows:

1. The appellant's name was certified on October 27, 2023 from the Police Officer (M0029D), Clifton, eligible list. In disposing of the certification, the appointing authority requested the removal of the appellant's name as he was found psychologically unsuitable for the position. The certification was returned to this agency on April 18, 2024 prior to the disposition due date of April 29, 2024. The certification was then recorded as disposed on May 17, 2024, with 10 appointments effective April 5, 2024.
2. In a letter postmarked March 22, 2024, F.T., through his attorney, filed an appeal of his psychological disqualification. The appellant was emailed on March 15, 2024 by a Clifton Police Lieutenant that he did not pass his psychological evaluation.¹

¹ This agency accepts appeals of psychological disqualification prior to the disposition of the certification so long as the appellant submits, along with the appeal, correspondence from the appointing authority or its designee that the appellant was disqualified on that basis. If verbally

3. The parties were then sent a letter, dated April 9, 2024, acknowledging the appeal and advising that submissions were to be filed within 20 days from the date of the letter. Additionally, the parties were advised that if the appellant wished to submit a report and recommendation from a New Jersey licensed psychologist or psychiatrist, he could do so within 90 calendar days from the filing of the appeal to the Civil Service Commission (Commission) pursuant to *N.J.A.C. 4A:4-6.5(e)*. Furthermore, the parties were informed that the date of receipt of the appointing authority's submission did not toll the regulatory time period. Thus, the appellant's report was due on or before June 20, 2024.² The April 9, 2024 letter also informed the parties that if a party needed an extension of the time periods, the party must notify this agency in writing with the reason for the extension. The appellant did not request an extension.
4. The appointing authority emailed the pre-appointment psychological report to the appellant's attorney on June 12, 2024, and the tests were emailed on June 14, 2024. The appointing authority did not request an extension of time for its submissions.
5. On August 5, 2024, the appellant's independent report was received by this agency with a postmark of July 30, 2024. The report noted that the appellant was evaluated by Dr. Robert Kanen on July 10, 2024. Dr. Kanen's report was dated July 15, 2024 and indicated that the appellant was psychologically suitable for employment as a Police Officer.
6. Since the appellant's report was issued and received after the 90-day regulatory time period, the appellant was provided the opportunity to submit additional argument and information to demonstrate good cause to accept the late report.

In response through his attorney, the appellant initially argues that in accordance with *N.J.A.C. 4A:4-6.5(d)*, and as set forth in the April 9, 2024 letter from this agency, the appointing authority was required to submit a complete psychological or psychiatric report which was the basis for the appellant's disqualification, as well

advised, the appellant must submit a sworn notarized statement, certification, or affidavit indicating that the disqualification was communicated to him verbally, as well as providing the details of the communication.

² The letter incorrectly noted that the appellant's independent report was due on March 6, 2024.

as all tests and other information, within 20 days of the date of the letter. Further, the appellant maintains that per *N.J.A.C. 4A:4-6.5(d)2*, as of April 29, 2024, he should have been retained on the subject eligible list as the appointing authority did not provide any submissions as required by the rule. Thereafter, on June 11, 2024, the appellant's attorney states that she contacted this agency "to complain that [she] did not receive the required materials within the specified time." Staff then sent an email to the appointing authority on June 12, 2024, advising that the psychological report and tests had not been received. The appellant's attorney contends that she "assumed that the appointing authority was granted an extension; otherwise, the [a]ppointing [a]uthority's request for the appellant's removal would have been denied," and the appellant would have remained or be immediately restored to the subject eligible list. The appellant's attorney also emphasizes that she did not agree with this extension of time as she replied to staff that "[i]f this were an appellant, we would not receive these courtesies." Further, the appellant's attorney submits that "[w]hile the 90 days do not toll, [she has] every right to rely on the appointing authority's requirement that the reports be provided to the [a]ppellant within twenty (20) days which was not done." She emphasizes that she did not receive the full report "until June 18, 2024,"³ just 2 days before the 90-day mark." Further, the appellant's attorney explains that scheduling an independent evaluation "has been difficult" and the evaluation was scheduled on Dr. Kanen's earliest available date. She also notes that she was on vacation for 10 days during that time and immediately submitted Dr. Kanen's report upon her return. Therefore, the appellant requests that his independent psychological report be accepted.

CONCLUSION

N.J.A.C. 4A:4-6.3(b) provides that the appointing authority shall have the burden of proof in medical or psychological disqualification appeals. Moreover, *N.J.A.C. 4A:4-6.5(d)* states that:

Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the [Commission], within 20 days, all background information, including any investigations and all complete medical, psychological, and/or psychiatric reports that were the basis for the removal request.

1. The appointing authority shall also furnish to the appellant's attorney or to a New Jersey licensed psychologist or psychiatrist of the appellant's choice upon request all of the information supplied to the [Commission].

³ As set forth above, the report was emailed to the appellant's attorney on June 12, 2024, and the tests were emailed on June 14, 2024.

2. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

Additionally, in order to further facilitate the timely processing of these types of appeals, the Commission amended *N.J.A.C.* 4A:4-6.5(e), effective June 21, 2017, to require that the appellant, if he or she chooses to do so, to submit a report from a physician or psychologist/psychiatrist to rebut the appointing authority's report within 90 calendar days of filing of the appeal. *See* 49 *N.J.R.* 492(a) and 49 *N.J.R.* 2239(a). These timeframes were designed to facilitate the opportunity for the parties to establish a contemporaneous record of an eligible's medical or psychological condition at the time of appointment for the Commission to consider. In that regard, based on longstanding administrative practice, a psychological assessment for employment in law enforcement is only considered valid for one year. *See In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008).

Nonetheless, *N.J.A.C.* 4A:4-6.5(f) indicates that the Commission may extend the time period for filing the required reports for good cause. It is noted that, in accordance with Section 6 of Executive Order 103 issued in response to the COVID-19 pandemic, the Commission approved various emergency adoptions of temporary rule relaxations and modifications to *N.J.A.C.* 4A with respect to timeframes associated with administrative appeals. In particular, *N.J.A.C.* 4A:4-6.5(e) was modified to include the good cause provision found in *N.J.A.C.* 4A:4-6.5(f). *N.J.A.C.* 4A:4-6.5(e) previously stated that "[t]he appellant may submit to the [Commission] a report from a New Jersey licensed physician, psychologist, or psychiatrist of his or her own choosing, which must be submitted within 90 calendar days of the filing of his or her appeal to the Commission." Effective April 9, 2020, the regulation was modified and stated that "[t]he appellant may submit to the [Commission] a report from a New Jersey licensed physician, psychologist, or psychiatrist of his or her own choosing, which must be submitted within 90 calendar days, which may be extended for good cause, of the filing of his or her appeal to the [Commission]." The temporary modifications have since expired. Nonetheless, *N.J.A.C.* 4A:4-6.5(f) remains in force, providing the Commission with the authority to extend the time period for filing the required reports for good cause.

However, the 90-day time period to submit a psychological or psychiatric report is not contingent upon the filing of the appointing authority's submission. *N.J.A.C.* 4A:4-6.5(e) specifically states that the appellant's report must be filed within 90 calendar days *of the filing of his or her appeal*, notwithstanding that the time period may be extended for good cause. Furthermore, *N.J.A.C.* 4A:4-6.5(g) indicates that the Commission shall either conduct a written record review of the appeal or submit psychological appeals to the Medical Review Panel for its report and

recommendation. In that regard, given the volume of psychological disqualification appeals historically received by the Commission, in conjunction with the fact that the Commission utilizes the Medical Review Panel, psychological medical professionals who review each case, the adjudication of psychological appeals is a lengthy process that can take up to two years. Specifically, the process consists of compiling the record which allows the appellant up to 90 days to submit an independent psychological evaluation as noted above; scheduling a meeting with the Medical Review Panel which generally meets once a month to review a maximum of six cases; awaiting the Medical Review Panel's report to be issued; permitting parties to submit exceptions and cross exceptions to the Report and Recommendation within 10 and five days of receipt, respectively; and issuing the Commission's final determination. If the Commission determines that a candidate was improperly rejected for the position, the remedy provided is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes. Therefore, in order to ensure a fair process to all parties, it is imperative that the timeframes established throughout the process are strictly enforced.

In the instant matter, the appellant has not shown good cause reasons to extend the timeframe. Initially, as set forth above, the 90-day timeframe to submit an independent psychological or psychiatric report is a regulatory time period and not contingent upon the filing of the appointing authority's submission. The appellant was clearly advised of that in the April 9, 2024 letter. Further, although an appellant is provided with the opportunity to submit a report from a psychologist or psychiatrist to rebut an appointing authority's report, an appellant's evaluation may be conducted independently. Numerous appellants have submitted their independent report without their doctors reviewing the pre-appointment report or tests. Thus, any argument in that regard is unpersuasive.

Moreover, *N.J.A.C. 4A:4-6.5(d)1* does not operate to automatically deny a request for removal and allow the retention of an eligible on an eligible list, contrary to what the appellant's attorney suggests. Rather, it provides that an appointing authority's failure to submit the required materials within the specified time **may** have its request for removal denied. In this case, while the appointing authority was not timely in its response to the April 9, 2024 letter, and should have been more diligent in that regard, the fact remains that it did submit the report and tests on appeal. It also provided the necessary documentation to dispose of the subject certification, which this agency recorded, approving the appellant's removal. Nonetheless, the appointing authority is well advised to be conscientious of the appeal process as the burden of proof in psychological disqualification appeals rests on the appointing authority. Accordingly, the timing of the appointing authority's submission in this case has no bearing on whether to accept the appellant's psychological report.

However, it is noted that, under certain circumstances, good cause could be established if an evaluation occurred prior to the due date, and through no fault of the appellant, the report was issued late and not forwarded to this agency. In this case, that did not occur. The appellant's evaluation was not conducted until July 10, 2024, and the report was not written until July 15, 2024, almost one month after the June 20, 2024 due date. The report was also not received by this agency until August 5, 2024. Furthermore, the lateness of the appellant's report is not reasonable or excusable. See *Appeal of Syby*, 66 N.J. Super. 460 (App. Div. 1961), *Atlantic City v. Civil Service Commission*, 3 N.J. Super. 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Board of Education*, 90 N.J. 145 (1982). As noted above, the appellant had 90 days to submit his psychological report, but it was not submitted until August 5, 2024, over a month after the due date. In that regard, the appellant's attorney explains that scheduling an independent evaluation "has been difficult" and the evaluation was scheduled on Dr. Kanen's earliest available date. She also notes that she was on vacation for 10 days at the time and immediately submitted Dr. Kanen's report upon her return. The Commission is mindful of an appellant's responsibility to begin securing a psychological evaluation as soon as an appeal is filed or even before that time in preparation for the appeal and to address any contingencies that may arise so that the 90-day regulatory timeframe may be met and so that the appellant does not face dismissal of the appeal, as only good cause can extend the time period. The appellant had the full 90 days to secure an evaluation, and he could have sought another doctor's services to meet the due date. Further, in this case, scheduling conflicts, such as one's vacation leave, does not provide good cause reasons to relax regulatory provisions. Nothing presented herein, provides for an excuse for the delay. It is also noted that the appellant did not contact this agency for an extension at any time.

Lastly, the Commission must balance the reasons for the delay and the effect of accepting a late report, as it is prejudicial to the appointing authority, and potentially a current employee, to allow an appellant's appeal to proceed. In that regard, the remedy provided to successful appellants in psychological disqualification cases is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes upon successful completion of the working test period. Should a position not be available, the last employee hired must be displaced. See *In the Matter of Stanley Kolbe, Jr.* (CSC, decided May 21, 2014) (Commission enforced prior order granting retroactive appointment to the appellant after a mandated appointment resulting from successfully appealing a failed psychological evaluation and dismissed the appointing authority's claims of fiscal constraints and a recent layoff when three employees who ranked lower than the appellant on the eligible list were not impacted by the layoff). As set forth above, the appellant has not provided sufficient reason for the delay, and accepting his late report would be prejudicial to the appointing authority and potentially to a current

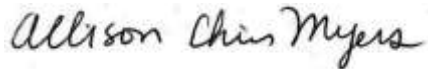
employee who had been appointed from the subject certification or later. Thus, the Commission finds that the appellant did not meet the regulatory time period for submission of his independent psychological report or provide good cause reasons to extend the time period. Accordingly, his appeal cannot proceed.

ORDER

Therefore, it is ordered that this appeal be dismissed.

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 15TH DAY OF JANUARY, 2025



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