



<p>In the Matter of J. V., Essex County, County Correction Officer (S9999R)</p> <p>CSC Docket No. 2015-2459</p>	<p>STATE OF NEW JERSEY</p> <p>FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION</p> <p>Medical Examiners Panel Appeal</p>
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ISSUED (ED) OCT 26 2016

J. V., represented by Nicholas J. Palma, Esq., appeals his rejection as a County Correction Officer candidate by the County of Essex and its request to remove his name from the eligible list for County Correction Officer (S9999R) on the basis of medical unfitness to perform effectively the duties of the position due to medications used for insomnia and pain.

This appeal was brought before the Medical Examiners Panel on December 2, 2015, which rendered the attached report and recommendation on December 4, 2015. The appellant, Valerie Palma DeLuise, Esq., and Dr. Daniel Gollin were present at the meeting and no representative from Essex County was present. No exceptions were filed by the parties.

N.J.A.C. 4A:4-6.5 provides for the Civil Service Commission to utilize the expertise of a Medical Examiners Panel to make a report and recommendation on medical disqualification issues. The Panel is composed of medical professionals, all of whom are faculty and practitioners of Rutgers Biomedical and Health Sciences.

In this case, the Medical Examiners Panel's Chairman, Lawrence D. Budnick, MD, Director of Occupational Medicine Service and Associate Professor of Medicine, Rutgers Biomedical and Health Sciences, requested a medical specialist to perform a chart review and to make findings and recommendations regarding appellant's medical fitness for the job in question.

The report by the Medical Examiners Panel discusses all submitted evaluations. The Panel, based on the evaluation of submitted information and the

medical consultant's review, found, with a reasonable degree of medical certainty, that appellant has no significant disease, impairment or functional limitation that would cause a direct threat to himself or to others in the position of County Correction Officer. The Panel found that appellant was physically capable to undergo physical training and to perform the essential functions of the job. Therefore, it recommended that the appellant's name be restored to the subject eligible list.

Having considered the record and the Medical Examiners Panel's report and recommendation issued thereon and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Examiners Panel's report and recommendation.

ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that J. V. is medically unfit to perform effectively the duties of a County Correction Officer and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issues 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. sec. 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 Examinations* (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 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 OCTOBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachments

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