



In the Matter of G.R.,
County Correction Officer,
Morris County(C9972M)

CSC Docket No. 2013-1333

: STATE OF NEW JERSEY
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: FINAL ADMINISTRATIVE ACTION
: OF THE
: CIVIL SERVICE COMMISSION
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: Medical Examiners Panel Appeal
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ISSUED OCT 21 2016 (DASV)

G.R., represented by Anthony M. Arbore, Esq., appeals the request by Morris County to remove her name from County Correction Officer (C9972M) eligible list for medical unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Examiners Panel (Panel) on January 16, 2014, which rendered the attached report and recommendation on January 22, 2014. The appellant, her husband M.M., and Arbore were present at the meeting. John Barbarula, Esq., who represents Morris County, was also present at the meeting. Exceptions were filed on behalf of the appellant, and cross-exceptions were filed on behalf of the appointing authority.

N.J.A.C. 4A:4-6.5 provides for the Civil Service Commission (Commission) to utilize the expertise of the 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 New Jersey Medical School.

In this case, the Medical Examiners Panel's Chairman, Lawrence D. Budnick, MD, Director of Occupational Medicine Service and Associate Professor of Medicine, Rutgers New Jersey Medical School, requested a medical specialist to perform a chart review and to make findings and recommendations regarding the appellant's medical fitness for the job in question. Based on the evaluation of submitted information and the medical consultant's review, the Panel found, with a reasonable degree of medical certainty, that the appellant has a significant medical condition in her back which would likely be aggravated upon performing the essential functions

of a County Correction Officer. Therefore, it recommended that the appellant not be considered to be physically capable of undergoing the training involved to be a County Correction Officer, nor should she be considered to be able to perform the duties associated with the position.

In her exceptions, the appellant maintains that the Panel “placed a great reliance” on the report by Dr. Arnold T. Berman, who conducted an independent orthopedic medical evaluation of the appellant as part of her pre-employment medical examination and found her not medically fit for the position.¹ She asserts that Dr. Berman’s report contains inaccuracies. For instance, Dr. Berman noted that the appellant stated that she had not had any surgeries, when in fact, she has had two prior back surgeries when she was 12 and 17 years old. The appellant indicates that she informed Dr. Berman that she had not had any *recent* surgeries. Moreover, in one part of his report, Dr. Berman referred to the appellant as a male but she is female. Further, the appellant emphasizes that Dr. Berman determined that she had “an absolutely normal examination” of the spine, shoulders, arms, hips, knees, and legs. Thus, she argues that any characterization that she has recurrent low back pain is “factually and medically inaccurate.” She submits that her back injury five years after her 2006 surgery and unrelated neck pain were transient in nature and quickly resolved. Additionally, the appellant contends that her treating orthopedic surgeon, Dr. Joel H. Spielman, is in the best position to provide an analysis of her ability to perform the duties of a County Correction Officer. Dr. Spielman “firmly” disagrees that the appellant would be predisposed to injury in her lumbar spine and has cleared her for full duty employment. The appellant notes that even if she were predisposed to potential neuropraxic injury, as indicated by Dr. Spielman in the case of epidural scarring, this type of injury is the mildest classification of peripheral nerve injury and is normally followed by a quick and complete recovery period. Thus, the appellant maintains that the appointing authority has failed to submit substantial evidence that she would be unable to complete the training program or serve as a County Correction Officer due to her prior condition. Therefore, based on the law set forth in *Greenwood v. State Police Training Center*, 127 N.J. 500 (1992),² the appellant contends that her prior surgeries do not significantly increase her risk of injury. Accordingly, she submits that the Panel’s finding of a likelihood of possible re-injury “is mere supposition and conjecture not supported by the medical evidence and facts.” The appellant urges the Commission to uphold her appeal. Alternatively, she requests that the

¹ The appellant challenges the appointing authority’s failure to submit Dr. Berman’s *curriculum vitae* for the Panel’s consideration pursuant to N.J.A.C. 4A:4-6.5(f). However, N.J.A.C. 4A:4-6.5(f) does not require the doctor’s actual *curriculum vitae*. Rather, the rule provides that reports submitted by a party include the professional’s signature and the type of license or educational degree of the professional. See N.J.A.C. 4A:4-6.5(f)1. Regardless, the appointing authority presents Dr. Berman’s *curriculum vitae* in its cross exceptions.

² Greenwood suffered from limited vision in his right eye and had been dismissed from the Police Training Academy as a temporary Sheriff’s Officer. The New Jersey Supreme Court reversed the decision of the Superior Court of New Jersey, Appellate Division, to uphold the dismissal.

Commission refer her to an independent professional evaluation pursuant to *N.J.A.C. 4A:4-6.5(g)4* before any further determination is made.

In its cross exceptions, the appointing authority contends that the Panel's decision "is well founded based on the medical evidence" and no independent medical examination is warranted. It emphasizes that the issue in this case is the appellant's "one and only spinal column," and thus, the appellant is not similarly situated to the individuals whose cases the appointing authority cites. It maintains that, as set forth by Dr. Berman, the appellant's condition makes her unable to perform the duties of a County Correction Officer without substantial physical harm to herself and posing a threat to others. Therefore, the appointing authority requests that the appellant's appeal be denied.

CONCLUSION

Initially, *N.J.A.C. 4A:4-6.5(g)4* provides that, in appropriate cases, the Commission may refer an appellant for an independent professional evaluation. In this case, the Commission does not find it necessary, as the appellant has had the opportunity to present an evaluation by her treating physician and dispute the findings of the appointing authority's physician. Her records were also reviewed by the Panel, which had the opportunity to meet with the appellant and discuss her medical history. Therefore, the appellant's request in that regard is denied.

Having considered the record 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 as contained in the Panel's report and recommendation that the appellant is not medically fit to undergo the training involved to be a County Correction Officer and perform effectively the duties of the position. The Panel set forth the appellant's medical history regarding issues with her back, which began in 1999 and includes disc herniation, laminectomies in 2000 and 2006, a discectomy in 2000, epidural enhancing scarring, and back pain in 2006, 2011, and 2012. Thus, the appellant's argument that she does not have recurrent low back pain is unconvincing. While she may have been cleared to work by Dr. Spielman, she acknowledges Dr. Spielman's prognosis that in the case of epidural scarring, there is potential neuropraxic injury. Thus, as found by the Panel and contrary to the appellant's argument, there is a reasonable degree of medical probability that the appellant's medical condition in her back would likely be aggravated in the position sought. It is emphasized that one of the functions of a County Correction Officer is to physically restrain inmates to prevent injuries to staff and other inmates and to maintain security. The appellant's significant medical history in her back could prevent the efficient performance of the duties of the position, cause her to be a hazard to herself or others, and become aggravated as a result of performing those

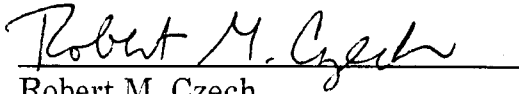
duties. Accordingly, the appellant is not medically fit for the position and her appeal is denied.

ORDER

The Commission finds that the appointing authority has met its burden of proof that G.R. is not medically fit to perform effectively the duties of the title and, therefore, the Commission orders that her 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 19TH DAY OF OCTOBER, 2016



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Chairperson
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Attachment

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