

In the Matter of M.H., Police Officer
(S9999R), Jersey City

STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2870

Medical Review Panel

ISSUED: JUL 18 2017 (BS)

M.H., represented by David J. DeFillippo, Esq., appeals his rejection as a Police Officer candidate by Jersey City and its request to remove his name from the eligible list for Police Officer (S9999R), Jersey City on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was referred for independent evaluation by the Civil Service Commission in a decision rendered February 8, 2017, which is attached. The appellant was evaluated by Dr. Robert Kanen, who rendered the attached Psychological Evaluation and Report on March 14, 2017. No exceptions were filed by the parties.

The Psychological Evaluation and Report by Dr. Robert Kanen, the Civil Service Commission's independent evaluator, discusses the evaluation procedure and reviews the previous psychological findings relative to the appellant. In addition to reviewing the reports, letters, recommendations and test data submitted by the previous evaluators, Dr. Kanen administered the following: Clinical Interview/Mental Status Examination, Public Safety Application Form, Behavioral History Questionnaire, and the Inwald Personality Inventory. Dr. Kanen characterized the appellant as presenting with neither cognitive issues nor evidence of psychopathology or personality problems that would interfere with work performance. The appellant appeared to be honest and candid in his responses to Dr. Kanen's questions. With regard to personality testing, the appellant fell into the category of likely to meet expectations in terms of his ability to control conflict and in his ability to relate to and work well with the public. In addition to his Bachelor's and Master's degrees in Criminal Justice, he was valedictorian of his high school class and he has above average cognitive ability. Dr. Kanen found no evidence of temper control problems or issues with drugs or alcohol (although the appellant did admit to using marijuana in the past). Dr. Kanen opined that the

incident during the medical evaluation "appears to carry too much weight in the finding of psychological unsuitability" in that there is no indication of significant acting out tendencies, evidenced by the appellant having no history of arrests for assaultive behavior or restraining orders. Dr. Kanen concluded that the appellant was psychologically suitable for employment as a Police Officer and has so recommended.

CONCLUSION

Having considered the record and the Independent Psychological 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 Independent Psychological Report and Recommendation. The Civil Service Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and found that the psychological traits which were identified and supported by test procedures and the behavioral record do not relate adversely to the appellant's ability to effectively perform the duties of the title. Having considered the record and the Independent Psychological Report and Recommendation issued thereon, and having made an independent evaluation of same, the Commission finds no compelling reason to deny the appellant the opportunity to attend the training academy and to serve as a Police Officer.

ORDER

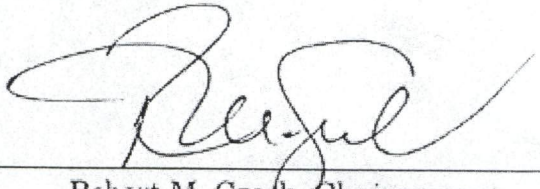
The Civil Service Commission finds that the appointing authority has not met its burden of proof that M.H. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification 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 the 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 13TH DAY OF JULY, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: M.H.
David J. DeFillippo, Esq.
Jeremy Farrell, Corp. Counsel
Kelly Glenn