

is deemed in the professional judgment of this psychologist to be insufficient to support the categorization of [the appellant] as ‘psychologically unfit’ to perform the duties of a [P]olice [O]fficer.” Upon review, the Panel indicated that although “Dr. Schievella is responsible for keeping the files and data on individuals he evaluates, what is not accurate is that Dr. Fretz was unable to complete his own evaluation of the candidate without the raw data Dr. Schievella admittedly lost.” Moreover, the Panel could not ignore the subsequent information presented by Dr. Schievella, which questioned the appellant’s psychological suitability for the position sought. In that regard, in a letter dated May 13, 2016, Dr. Schievella stated that the “preponderance of material resulting in the subject’s disqualification was based largely on his background history, as well as his demeanor during the interview.” In addition, he stated that the Marlboro Police Department re-investigated the appellant regarding the “anecdotal reports” that he was intoxicated responding to fire calls. The appellant had been a volunteer Fire Fighter with the Marlboro Volunteer Fire Department. For instance, on March 13, 2015, a patrolman stated that the appellant “questions authority and would make a terrible cop.” The patrolman indicated that the appellant was on a fire truck with alcohol on his breath. Moreover, on March 11, 2015, a District 1 Fire Commissioner said, “if you hire [the appellant], you will be in trouble. He is a ticking time bomb . . . [The appellant] doesn’t like to be told what to do and has a problem with authority.” The Fire Commissioner further indicates that the appellant makes “bad decisions” and in 2014, during a bus fire on Route 79, the appellant was sitting in his pickup truck drinking beer and heckling the Fire Fighters while they were fighting the fire. Therefore, considering the length of time since the pre-appointment evaluation was conducted in December 2014, the information provided by Dr. Schievella in his May 13, 2016 letter, and Dr. Fretz’s evaluation, the Panel recommended that the appellant undergo an independent evaluation. It also requested that the independent evaluator be provided with the background investigation of the appellant, the independent evaluator gather collateral information from individuals noted in the documents, and Dr. Schievella and Dr. Fretz submit all their raw data and reports to the independent evaluator.

In his exceptions, the appellant emphasizes that Dr. Schievella failed to produce materials as mandated by *N.J.A.C. 4A:4-6.5(d)*. He argues that failure to produce such materials prejudiced his ability to refute the conclusion that he was not suited for appointment as a Police Officer. Moreover, while the appellant agrees that Dr. Schievella’s report is outdated, he maintains that there is sufficient evidence in the record, such as Dr. Fretz’s report, testing protocols, and letters of recommendation, which demonstrate that he is qualified for appointment. Regarding Dr. Schievella’s May 13, 2016 letter, the appellant contends that the information contained therein is “nothing more tha[n] hearsay character assassination.” The appellant states that he refuted this information during the Panel meeting and has submitted favorable reference letters regarding his tenure as a volunteer Fire Fighter. Thus, the appellant maintains that it is unnecessary to

refer him for an independent evaluation, and the Commission should instead grant his appeal.

In its cross exceptions, the appointing authority, represented by Louis N. Rainone, Esq., states that it supports the Panel's recommendation for the appellant to undergo an independent evaluation. It notes, however, that the Police Officer (S9999R), Marlboro Township, eligible list is now expired. In that regard, the eligible list expired on March 22, 2017.

CONCLUSION

Initially, the appellant argues that the failure to produce the testing materials from the pre-appointment evaluation prejudiced his ability to refute the conclusion that he was not suited for appointment as a Police Officer. *N.J.A.C. 4A:4-6.5(f)* states, in pertinent part, that professional reports submitted by either of the parties shall include the following:

4. A finding as to the qualifications of the appellant for effective performance of the duties of the title; and
5. All tests that have been administered (for example, EKG, EEK, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

While the appellant's psychologist is entitled to review the raw data and protocols of the tests administered by the appointing authority's evaluator, it does not render the initial evaluation invalid. As indicated by Dr. Schievella, the appellant's disqualification was based largely on his background history and his demeanor during the interview. Moreover, Dr. Schievella's written report sets forth the results of the specific psychological tests. The appellant's psychologist had sufficient information to rebut the conclusion of Dr. Schievella. Dr. Fretz could have also administered the same tests to challenge the findings of Dr. Schievella. As indicated by the Panel, Dr. Fretz still had the ability to complete his own evaluation of the appellant without the raw data Dr. Schievella admittedly lost. Thus, the appellant's arguments in that regard are unpersuasive.

Moreover, contrary to the appellant's contention, there is not sufficient evidence in the record at this time to consider him psychologically suitable for appointment. In that regard, the job specification for Police Officer 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 laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring. Thus, it is

clear that a Police Officer must have the ability to follow rules. Additionally, Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Although the appellant contends that he has refuted the negative information during the Panel meeting and has submitted favorable reference letters regarding his tenure as a volunteer Fire Fighter, the information presented by the appointing authority raises serious concerns regarding his psychological suitability for the position. Therefore, the Commission agrees with the Panel and accepts its report and recommendation that the appellant undergo an independent evaluation. As for the appointing authority's concern, the Commission has the ability to revive the Police Officer (S9999R), Marlboro Township, eligible list and restore the appellant for appointment. *See N.J.A.C. 4A:4-3.4*. In addition, the Commission notes that its staff will provide the independent evaluator with the information that has been submitted to the Panel, which includes the reports and any raw data compiled in this appeal. However, should the independent evaluator find it necessary to gather additional information, the parties should fully cooperate in the request.

ORDER

The Commission therefore orders that J.S. be administered an independent psychological evaluation. The Commission further orders that the cost incurred for this evaluation be assessed to the appointing authority in the amount of \$530. Prior to the Commission's reconsideration of this matter, copies of the independent evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

J.S. is to contact Dr. Robert Kanen, the Commission's independent evaluator, within 15 days of the issuance of this determination in order to arrange for an appointment. Dr. Kanen's address is as follows:

Dr. Robert Kanen
Kanen Psychological Services
76 West Ridgewood Avenue
Ridgewood, New Jersey 07450
(201) 670-8072

If J.S. does not contact Dr. Kanen within the time period noted above, the entire matter will be referred to the Commission for final administrative determination and the appellants lack of pursuit will be noted.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF MARCH, 2018



Deirdre L. Webster Cobb
Acting Chairperson
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Attachment

c: J.S.
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