



In the Matter of N.F., Fire Fighter (M2554M), City of Newark CSC Docket No. 2017-1641	: : : : : : : : : : : : : : : :	STATE OF NEW JERSEY FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION Medical Examiners Panel Appeal
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ISSUED: MARCH 29, 2018 (DASV)

N.F. appeals the request by the City of Newark to remove his name from the Fire Fighter (M2554M) eligible list for medical unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Examiners Panel (Panel) on September 13, 2017, which rendered the attached report and recommendation on September 18, 2017. The appellant was present at the meeting. The appointing authority was not present. No exceptions were filed by the parties.

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 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 did not possess any significant disease, impairment, or functional limitation that would limit his ability to perform the essential functions of a Fire Fighter or cause a direct threat to himself or others on the job. Therefore, it recommended that the appellant be considered to be physically capable of

undergoing the training involved to be a Fire Fighter and to perform the duties associated with the position.

It is noted that the appellant's name was certified on December 2, 2015 from the Fire Fighter (M2554M), City of Newark, eligible list, which expired on December 12, 2015. The certification was not disposed of until November 1, 2016, but appointments had been made effective March 7, 2016.

CONCLUSION

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 medically fit to undergo the training involved to be a Fire Fighter and perform effectively the duties of the position. The appellant was initially found not to be medically fit for appointment due to cardiac tests, hypertension, and vision. However, the appellant's cardiologist indicated, among other things, that the appellant's ECG revealed "normal sinus rhythm" and cleared the appellant to participate as a Fire Fighter without cardiac restriction. Given the foregoing and its review of all submitted documents, including documentation regarding issues of hypertension and vision, the Panel did not find a basis to remove the appellant from the subject eligible list for medical unfitness.

ORDER

The Commission finds that the appointing authority has not met its burden of proof that N.F. is medically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that the Fire Fighter (M2554M), City of Newark, eligible list, be revived and the appellant's name restored for retroactive appointment. In that regard, 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 March 7, 2016, 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, except the relief enumerated above.

This is the final administrative determination in the matter. Any further review should be pursued in a judicial forum.

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



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