ISSUED: OCTOBER 23, 2020 (DASV)

		STATE OF NEW JERSEY
In the Matter of B.J.S., Fire Fighter	: : :	DECISION OF THE CIVIL SERVICE COMMISSION
(M1867W), City of Pleasantville	: : :	
CSC Docket No. 2020-2389	: : :	Medical Review Panel

B.J.S., represented by Michelle J. Douglas, Esq. and Phillip S. Burnham, II, Esq., appeals his rejection as a Fire Fighter candidate by the City of Pleasantville and its request to remove his name from the eligible list for Fire Fighter (M1844W) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel (Panel) on July 31, 2020, which rendered a report and recommendation. Exceptions and cross exceptions were filed by the parties.

The report by the Panel discusses all submitted evaluations and the information obtained from the meeting. The negative indications related to the appellant's poor judgement and substance abuse. In that regard, the appellant was suspended in 2010 in his current employment as an Equipment Operator due to damaging a vehicle, has a history of juvenile charges for a curfew violation and unlawful fireworks, and was charged for urinating in public. Moreover, Dr. Matthew Guller, the appointing authority's evaluator, stated that the appellant used "illegal opioid medication for a year following a surgery" and drinks "three to four times a week at present." The appellant also has tattoos, "many of which are suggestive of drinking." Based on these concerns, Dr. Guller did not find the appellant psychologically suited for a Fire Fighter position. Dr. Gary Glass, the appellant's evaluator, also noted the appellant's "brief period of drug use following the appropriate prescription of painkillers for a legitimate reason." However, the appellant sought help and "was able to resolve his problem." Additionally, Dr. Glass indicated that the appellant has been a volunteer Fire Fighter for six years and has received awards. Dr. Glass recommended the appellant for the position of Fire Fighter.

Upon its evaluation, the Panel noted the concerns of the pre-appointment evaluation and discussed the appellant's employment and legal history and substance With regard to the latter, the appellant advised the Panel that he used use. marijuana at least 20 times during high school and has a history of addiction to opioids. He was prescribed an opioid for a physical injury and reported purchasing opioids at work from co-workers. The Panel stated that the appellant voluntarily obtained treatment for his addiction and has been sober from opioids since 2011. However, the Panel was concerned with the appellant's current consumption of alcohol. The appellant reported to the Panel that he drinks "fairly often," at least three to four times a week and has a "beer or two" with dinner. He denied drinking and driving and disputed that he consumes 10 to 12 beers at one sitting. The appellant clarified that he was attempting to account for as many occasions, such as special events, when he reported his alcohol use. Notwithstanding the clarification, the Panel remained concerned with the appellant's alcohol use and noted that there was "conflicting information with regards to his presentation before the" Panel. Therefore, based on the evaluations, the test results of the appellant, his presentation at the meeting, the Panel requested that the appellant undergo an independent evaluation.

In its exceptions to the Civil Service Commission (Commission), the appointing authority, represented by Amy E. Rudley, Esq., requests to be "relieved from any additional costs associated with this applicant" should the Commission refer the appellant for independent evaluation. It states that "the presentation of conflicting information by the applicant should not be met with further opportunities to explain at City expense." The appellant should pay the cost.

In his cross exceptions, the appellant notes that the appointing authority bears the burden of proof in this matter. Thus, it is appropriate for the appointing authority to be assessed the cost of the independent evaluation under Civil Service rules. The appellant emphasizes that the appointing authority does not offer any persuasive legal authority to the contrary.

CONCLUSION

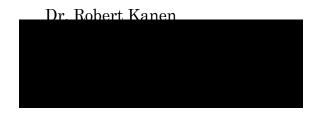
The Commission has reviewed the report and recommendation of the Panel. The Commission notes that the Panel conducts an independent review of the raw data presented by the parties as well as the recommendations and conclusions drawn by the various evaluators and that, in addition to the Panel's own review of the results of the tests administered to the appellant, it also assesses the appellant's presentation before it prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented. The Commission agrees with the Panel's recommendation and finds it necessary to refer the appellant for an independent evaluation by a New Jersey licensed psychologist. However, the evaluation shall not only include an in-depth assessment of the appellant's alcohol consumption, but also a review of his overall behavior history, and whether these behaviors deem him psychologically unsuitable for a Fire Fighter position.

In response to the appointing authority's exceptions, the Commission has the discretion to assess the \$530 cost incurred for the independent evaluation to the appointing authority. See In the Matter of J.D., Docket No. A-6849-03T2 (App. Div. December 6, 2005). In that regard, N.J.A.C. 4A:4-6.5(g)(5) in relevant part provides that the Commission "may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation." The Commission is mindful that while the appellant may have provided different estimates of his alcohol consumption, he clarified his responses. His responses should nonetheless be verified during the independent evaluation. Moreover, the Commission has ordered an in-depth assessment of not only the appellant's alcohol consumption but also his behavioral history. The Commission cannot, at this juncture, find that the appointing authority's pre-appointment evaluation dispositive of the appellant's psychological unfitness for a Fire Fighter position. The appointing authority has the burden of proof in psychological disqualification appeals. See N.J.A.C. 4A:4-6.3(b). Therefore, under these circumstances, the Commission concludes that it is appropriate to assess the cost incurred for the independent evaluation to the appointing authority.

ORDER

The Commission therefore orders that B.J.S. be administered an independent psychological evaluation as set forth in this decision. 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 consideration of the evaluation, copies of the independent evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

B.J.S. is to contact Dr. Robert Kanen, the Commission's independent evaluator, within 15 days of the issuance date on this determination to schedule an appointment. Dr. Kanen's contact information is as follows:



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

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE 21ST DAY OF OCTOBER 2020

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Deirdré L. Webster Cobb Chairperson Civil Service Commission

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c: B.J.S.

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