

limitation that would cause a direct threat to himself or to others in the position of Fire Fighter. The Panel found that appellant was physically capable to undergo physical training and to perform the essential functions of the job. Therefore, it recommended that the appellant's name be restored to the subject eligible list.

Having considered the record and the Medical Examiners Panel's 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 Medical Examiners Panel's report and recommendation.

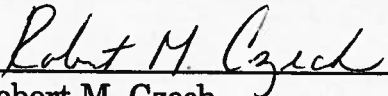
ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that C. M. is medically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that his name be restored to the subject eligible list. 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 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 1st DAY OF APRIL 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
PO Box 312
Trenton, New Jersey 08625-0312

Attachments

c: C. M.
Michael E. Greene, City of Newark
Kenneth Connolly