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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of R.R., Fire Fighter
(M2542M), Elizabeth

CSC Docket No. 2016-1300

Medical Review Panel Appeal

ISSUED: APR 12 2017 (BS)

R.R., represented by Michael L. Prigoff, Esq., appeals his rejection as a Fire Fighter candidate by the Village of Ridgewood and its request to remove his name from the eligible list for Fire Fighter (M2567M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on January 26, 2017, which rendered the attached report and recommendation on January 26, 2017. No exceptions were filed by the parties.

The report by the Medical Review Panel discusses all submitted evaluations. The test results and procedures and the behavioral record, when viewed in light of the Job Specification for Fire Fighter indicate that the applicant is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. Accordingly, the Panel recommended that the candidate be restored to the eligible list.

CONCLUSION

Having considered the record and the Medical Review 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 Review Panel's Report and Recommendation.

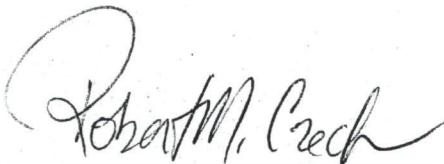
ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that R.R. is psychologically 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 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 5TH DAY OF APRIL, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
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Attachment

c: R.R.
Michael L. Prigoff, Esq.
Heather Mailander
Kelly Glenn

RR

TO: State of New Jersey, Civil Service Commission
Division of Appeals and Regulatory Affairs

FROM: Medical Review Panel
(Evan Feibusch, M.D., Joel Friedman, Ph.D.)

RE: [REDACTED]

DATE: 1/26/2017

Identifying Information:

Mr. [REDACTED] is a 26-year-old applicant to the Village of Ridgewood for the position of Fire Fighter. His name was removed from the eligibility list of the hiring authority for the reason of being psychologically unfit for the position. The applicant was interviewed by Robert Kanen, Psy.D. on behalf of the hiring authority and by Sandra Morrow, Ph.D. on behalf of the applicant. Mr. [REDACTED] Dr. Morrow, and Michael Prigoff, Esq. were present at the Medical Review Panel (MRP).

Documents Reviewed:

- Psychological Evaluation, Robert Kanen, Psy.D., 5/13/2015
- Shipley Institute of Living Scale Administration Form Part I, 5/8/2015
- Inwald Personality Inventory – 2 (IPI) Report, 5/11/2015
- Untitled True/ False Questionnaire completed as part of Dr. Kanen’s evaluation, undated
- Wide Range Achievement Test (WRAT) Scoring Sheet, 5/8/2015
- Public Safety Application Form, 5/8/2015
- Village of Ridgewood Career Firefighter Employment Application, 3/12/2015
- Various Credentials of Mr. [REDACTED]
- Letter from Mr. Prigoff to the NJ Civil Service Commission, 6/7/2016
- Psychological Evaluation, Sandra Morrow, Ph.D., 12/16/2015
- MMPI-2 Firefighters/ Paramedics Adjustment Rating Report, 1/5/2016

Findings of Previous Examiners:

Dr. Kanen conducted a psychological evaluation that included a clinical interview and the tests and questionnaires noted above. In his review of Mr. [REDACTED]’s behavioral history, Dr. Kanen raised concerns about the applicant having been involved in a number of fistfights in high school and college, suggesting that he was hypersensitive and had trouble controlling aggressive impulses. Dr. Kanen noted that some of the applicant’s responses on the IPI were not consistent with what he reported in the interview or other materials reviewed. He specifically noted that Mr. [REDACTED] had said that he had taken Xanax, but that on the IPI he said that he had never taken a tranquilizer. He indicated on the IPI that he had been arrested, but he did not report this in the interview or in other materials. Dr. Kanen made note of the applicant’s test results on the WRAT being indicative of a borderline reading score and that this could mean that he might have misread items. The Shipley was consistent with Mr. [REDACTED] having an IQ in the average range. Dr. Kanen opined that the applicant “has not done very much with his life.” He concluded that Mr. [REDACTED] was psychologically unsuitable for the position.

Dr. Morrow interviewed Mr. [REDACTED], reviewed available information from Dr. Kanen’s evaluation, and administered the MMPI. She reviewed Mr. [REDACTED]’s family, educational, and occupational history. She made note of him having been volunteering for the Little Ferry volunteer

[REDACTED]

fire department and rescue squad for seven years. At time of Dr. Morrow's evaluation, he had advanced to the rank of lieutenant and had been president of his company for two years and president of the department for one year. She provided a detailed discussion of the fights that he had been involved in, the last incidents having occurred in 2010 while he was in college. She rebutted Dr. Kanen's interpretation of Mr. [REDACTED] not reporting having taken Xanax (on the IPI) as having been due to him not recognizing Xanax as being a tranquilizer. Dr. Morrow did not see the applicant's history as reflective of reckless, impulsive behavior. Although there was a higher than average risk taking score on the IPI, other clinical scales associated with impulsivity were not elevated. The MMPI was interpreted as being reflective of a lack of psychological problems. Dr. Morrow opined that Mr. [REDACTED] was recommended for the position.

Mr. [REDACTED]'s Appearance at the Medical Review Panel Meeting:

Mr. [REDACTED] presented as an appropriately dressed man who appeared to be about his stated age. His behavior during the MRP was unremarkable in that he did not show signs of overt psychopathology such as psychosis or thought disorder. He answered the questions of the MRP in a cooperative manner.

Mr. [REDACTED] stated that he had been prescribed Xanax by his physician approximately three or four years ago. He took the medication approximately once a week for six months and had not used it since that time. He willingly described his history of having been involved in several altercations, dating to when he was in high school. The last altercation he had been involved in occurred in 2010 while he was at college, which was approximately five years prior to him being evaluated by Dr. Kanen. There was not any police involvement in any of the altercations and Mr. [REDACTED] said that any questions that he had answered on the testing that suggested that he had been arrested were errors on his part.

The applicant stated that the moving violation that he received had occurred in 2007, which was the only violation that he had ever incurred. His employment history did not reflect evidence of poor work performance. There was no evidence of gambling that rose to the level of having caused credit problems or problems meeting his personal responsibilities.

Mr. [REDACTED] told the MRP that he had been with his local volunteer fire department for nine years and in December 2015 he had been elected to the position of Captain. He stated that he had spent approximately twenty hours a week with the fire company and there had never been any disciplinary issues.

Conclusion:

The evaluators on behalf of the applicant and the hiring authority reached differing conclusions and recommendations. Dr. Kanen cited Mr. [REDACTED]'s history of being involved in fistfights, underachievement, and inconsistencies between his responses on the psychological testing and interview (and other materials) as the basis for finding a lack of suitability for the position. Dr. Morrow rebutted Dr. Kanen's concerns and cited the lack of findings on the MMPI and the applicant's success in the volunteer fire company as evidence for his being suitable for the position.

The MRP reviewed the material provided and briefly interviewed Mr. [REDACTED]. His behavior during his adolescence and earlier adulthood (significant moving violation, altercations) can certainly be construed as reflecting impulsivity, but we did not see a pattern of such behavior over the last five or six years. We are not aware of any new episodes of fistfights, moving violations, or legal entanglements. His professional employment history, though not reflective of sustained

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full-time employment, does not include derogatory information. His history of voluntary employment, in the field that he is currently attempting to enter, demonstrates success in this role.

Taking into consideration Dr. Kanen's and Dr. Morrow's evaluations, Mr. [REDACTED]'s presentation, the psychological test results, and the behavioral record when viewed in light of the job specifications for Firefighter, it indicates that the applicant is fit to perform effectively the duties of the position, and therefore, the action of the hiring authority should not be upheld.

Recommendation:

It is the recommendation of the Panel that the candidate, Mr. [REDACTED], be reinstated to the candidate eligibility list.

Evan L. Feibusch, M.D.

Evan L. Feibusch, M.D.
Diplomate of the American Board of
Psychiatry with Certification in the
Subspecialty of Forensic Psychiatry

1/26/2017

Date