



	:	STATE OF NEW JERSEY
	:	
	:	FINAL ADMINISTRATIVE ACTION
	:	OF THE
In the Matter of H.B. and J.P., Police	:	CIVIL SERVICE COMMISSION
Officer (S9999U), Jersey City	:	
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CSC Docket Nos. 2019-1656 and	:	Withdrawal of Appeals
2019-1657	:	
	:	
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ISSUED: FEBRUARY 27, 2020 (DASV)

H.B. and J.P., represented by Giovanna Giampa, Esq., request withdrawal of their appeals of their removal from the eligible list for Police Officer (S9999U), Jersey City, on the basis of psychological unfitness to perform effectively the duties of the position. It is noted that since the appeals have common issues, they have been consolidated herein.

The relevant facts are as follows:

1. H.B. and J.P. were certified for appointment from the Police Officer (S9999U), Jersey City, on October 1, 2018. In disposing of the certification, the appellants' names were removed on the basis of psychological unfitness for the position.
2. H.B. and J.P. appealed their removals to the Civil Service Commission (Commission) by letters dated December 17, 2018.
3. Letters, dated January 7, 2019, were sent to the parties acknowledging the appeals and advising that "the matter may be decided on the written record on initially reviewed by the Medical Review Panel" (Panel)." Additionally, the appellants were advised that should they wish to submit a report and recommendation from a New Jersey licensed psychologist or psychiatrist, they may do so within 90 calendar days from the

filing of the appeal to the Commission pursuant to *N.J.A.C.* 4A:4-6.5(e).

4. The appellants submitted timely independent psychological reports recommending their psychological fitness for a Police Officer position. Therefore, the appeal was referred to the Panel for its review.
5. By letters dated August 13, 2019, the parties through their attorneys were advised that the Panel would be considering the appellants' appeals at its meeting on September 19, 2019. The letter also informed the parties that the Panel would not postpone consideration of the appeal unless the request met with the provisions of *N.J.A.C.* 4A:2-1.3. In the event that there was good and sufficient reason for the review to be cancelled or postponed, the parties were to notify the Commission no later than August 20, 2019. The letters further indicated that "[f]ailure to comply shall result in the assessment of costs to the involved party(ies)." It is noted that the letters were emailed on August 13, 2019 and sent to the parties by regular mail.
6. The record in the matters were sent to the Panel on August 23, 2019 in preparation for its September 19, 2019 meeting.
7. However, the meeting was adjourned to October 16, 2019. The attorneys for the appellants and the appointing authority were informed of this change by email dated September 11, 2019. Specifically, the email advised that the appellants' interviews would be held at the same time as noted in the August 13, 2019 letter, which was 9:30 a.m. for J.P. and 10:30 a.m. for H.B. The email requested that the parties reply to confirm receipt. The appellants' attorney did so on September 11, 2019.
8. On October 15, 2019, the appellants through their attorney emailed a letter at 4:35 p.m. advising that they were withdrawing their appeals. The appellants' attorney stated that she "received email correspondence from both individuals indicating that they no longer wished to withdraw from the process entirely." Attached to the letters were emails from J.P. and H.B., sent on October 15, 2019 at 3:46 p.m. and 3:48 p.m., respectively, to their attorney. J.P. stated "I would like to withdraw from the whole process because of private issues that

have occurred. I'm sorry I didn't respond[.] I completely forgot. H.B. stated that "I'll have to withdraw because if not I'll lose my job for missing the day and we are having an emergency [and] it's mandatory we work. Thank you tho[ugh.]"

9. The Panel was compensated for its review of the appeals in the amount of \$675 for each case.

It is noted that the appellants' attorney was advised of the \$675 cost for each case and given the opportunity to submit argument should the appellants wish to object to the assessment of costs. In response, J.P.'s attorney states that he "was properly notified by this office of his hearing and received the original hearing letter via email, therefore, we will not be addressing his fee assessment."¹ As for H.B., her attorney indicates that there was "a clerical error" and H.B. never received the email her attorney sent her with the original August 13, 2019 notification to appear before the Panel on September 19, 2019. However, although H.B. received notice of the adjournment to October 16, 2019, there was "no new letter sent with a new deadline to withdraw the appeal." Her attorney advised her of the new October 16, 2019 date by email dated September 11, 2019 and requested confirmation of the notice by email. H.B. responded on September 12, 2019, "Confirmed, thank you." The appellant's attorney notes that, by that time, it was already out of the time set for adjournment requests in the original August 13, 2019 letter. Therefore, H.B. requests a waiver of the fee assessment.

CONCLUSION

N.J.A.C. 4A:4-6.5(g) provides in relevant part that the Commission shall either conduct a written record review of the appeal or submit psychological appeals to the Panel for its report and recommendation. The Panel is composed of professionals in the psychological field.² The Panel reviews the psychological testing data and reports submitted by the parties in the appeal in advance of the meeting, interviews candidates at the meeting, deliberates on each case, and writes reports with their recommendation to the Commission. The Commission relies on the Panel's reports to render its final determination as to whether the candidate was properly rejected for the position by the appointing authority. Given the volume of psychological disqualification appeals received by the Commission each year in conjunction with the fact that the Commission utilizes psychological medical professionals to review each case, the adjudication of psychological appeals is a lengthy process that can take up to two years. In this regard, the process consists of compiling the record which allows the appellant up to 90 days to submit an independent psychological evaluation; scheduling a meeting with the Panel which

¹ However, the Commission did not receive \$675 by November 25, 2019, the due date that was set for the remittance of the costs.

² The Panel is composed of two psychologists and one psychiatrist.

generally meets once a month to review a maximum of six cases; awaiting the Panel's report to be issued; permitting parties to submit exceptions and cross exceptions to the Panel's report and recommendation within 10 and five days of receipt,³ respectively; and issuing the Commission's final determination. If the Commission determines that a candidate was improperly rejected for the position, the remedy provided is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes. Therefore, in order to ensure a fair process to all parties, it is imperative that the timeframes established throughout the process are strictly enforced.

In the instant matter, H.B. and J.P. filed appeals by letter dated December 17, 2018 and were originally scheduled to meet with the Panel on September 19, 2019. On August 13, 2019, more than one month prior to the Panel meeting, the parties through their attorneys were advised of the date of the meeting and were specifically informed that the parties were to notify the Commission no later than August 20, 2019 if cancellation was requested. However, the appellants did not inform the Commission of their withdrawals until less than **one day** before the actual meeting of the Panel which was held on October 16, 2019. The Panel had already received the record in the matters and reviewed the cases in preparation for the meeting. As such, the Commission compensated the Panel \$675 for the review of each of the appellants' cases.

N.J.A.C. 4A:2-1.3 provides in part that:

(a) any party requesting an adjournment of a hearing or other review must establish good and sufficient reason for such request. Such reason may include, but is not limited to:

1. Unavoidable appearance by an attorney for a party in any state or federal court; or
2. Illness of a party evidenced by an affidavit and a doctor's certificate.

(b) Where an adjournment is found not to be for good and sufficient reason, the [Commission] may impose a fine or penalty.

In addition, *N.J.A.C.* 4A:4-6.5(g)5 states that the Commission "may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules."

In the instant matter, the appellants had ample opportunity to advise the Commission of their withdrawals. They were given over one month notice prior to the September 19, 2019 meeting. Through their attorney, the appellants were

³ See *N.J.A.C.* 4A:4-6.5(g)3ii.

informed in the August 13, 2019 scheduling letter regarding timeframes that “[f]ailure to comply shall result in the assessment of costs to the involved party(ies).” Additional time to consider their withdrawals was given to the appellants by virtue of the postponement of the September 19, 2019 Panel meeting. In that regard, the parties were informed on September 11, 2019 that the Panel meeting was postponed until October 16, 2019. Given the appellants’ failure to adhere to the timeframes established, they have caused unnecessary delay in the review process. In that regard, as set forth above, an appeal of psychological disqualification is a lengthy process. Had the appellants advised the Commission earlier, another case could have been presented to the Panel. Instead, the Panel reviewed the appellants’ records needlessly. J.P. has not presented any information whatsoever to waive the costs in this matter. His attorney specifically states that he was properly notified and will not be addressing the fee assessment.

Regarding H.B., her attorney requests a waiver of the costs of the Panel meeting, arguing that there was “a clerical error” and that she never received the email it sent with the original notification to appear before the Panel on September 19, 2019, nor the letter advising her of the timeframes. However, H.B.’s attorney notified H.B. of the change in meeting date on September 11, 2019. H.B.’s attorney advised her that the Panel meeting had been postponed from September 11, 2019 to October 16, 2019 at 10:30 a.m. Her attorney requested confirmation of the notice by email, and H.B. responded on September 12, 2019 with her confirmation. She had over a month prior to this notification to advise her attorney and the Panel that she was withdrawing. Regardless of whether H.B. did not receive the original notification and the due date for the original adjournment requests, her withdrawal was not made within a reasonable time. She clearly knew of the October 16, 2019 meeting date upon her September 12, 2019 confirmation of the email notice from her attorney, which was over one month prior to the date of the meeting. It is emphasized that the attorney’s September 11, 2019 email specifically stated that the September 19, 2019 Panel meeting was postponed to October 16, 2019, which suggests that there was a prior notice that H.B. could have inquired about with her attorney. Hence, she would then have gotten a copy of the letter. Nonetheless, as set forth above, H.B.’s withdrawal was not made in a timely manner. It is the responsibility of an appellant to attend a Panel meeting and make any arrangements necessary at his or her current employment to attend. Scheduling work conflicts do not provide good cause reasons to waive the assessment of costs in this matter. As set forth in the January 7, 2019 letter acknowledging the appeal, the appellants were informed that the matter may initially be reviewed by the Panel.

Therefore, the appellants have not shown good and sufficient reason to have withdrawn their cases less than one day prior to their scheduled meeting with the Panel. Therefore, the Commission orders that the appellants be assessed the cost of \$675 each for the Panel’s review of their cases. Additionally, the appellants’

appeals are considered withdrawn with prejudice and have been removed from the Commission's calendar.

ORDER AS TO J.P.

Therefore, it is ordered that J.P.'s appeal be withdrawn with prejudice. It is further ordered that J.P. be assessed the cost of the psychological review of his case by the Medical Review Panel in the amount of \$675 to be remitted to the Civil Service Commission within 30 days of issuance of this decision.

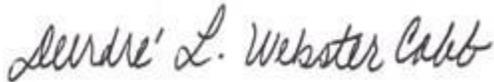
This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

ORDER AS TO H.B.

Therefore, it is ordered that H.B.'s appeal be withdrawn with prejudice. It is further ordered that H.B. be assessed the cost of the psychological review of her case by the Medical Review Panel in the amount of \$675 to be remitted to the Civil Service Commission within 30 days of issuance of this decision.

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 26TH DAY OF FEBRUARY, 2020



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