



STATE OF NEW JERSEY

In the Matter of M.D., Fire Fighter
(M1873W), Township of Teaneck

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2023-2160 and
2023-40

Medical Review Panel Appeal
and List Bypass

ISSUED: February 28, 2024 (SLK)

M.D., represented by Lynsey A. Stehling, Esq., appeals his rejection as a Fire Fighter candidate by the Township of Teaneck and its request to remove his name from the eligible list for Fire Fighter (M1873W)¹ on the basis of psychological unfitness to perform effectively the duties of the position. M.D. also appeals the prior bypass of his name on the same eligible list. These appeals have been consolidated due to common issues presented.²

This appeal was brought before the Medical Review Panel (Panel) on October 20, 2023, which rendered its Report and Recommendation on October 23, 2023. Exceptions and cross exceptions were filed on behalf of the parties.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Sandra Ackerman Sinclair, evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and found evidence of problems

¹ It is noted that the subject eligible list promulgated on March 29, 2019, and expired on April 19, 2023.

² CSC Docket No. 2023-2160 involves the appellant’s Medical Review Panel appeal. CSC Docket No. 2023-40 involves a list bypass appeal that was placed on hold pending the resolution of the Medical Review Panel appeal. The appellant had initially requested to hold the list bypass appeal pending completion of the hiring process for the later certification, which is the subject of the psychological disqualification appeal. The appellant’s name had been certified on December 6, 2021 (OL211183) and July 18, 2022 (OL220788) from the subject eligible list.

with respect to social competence, emotional regulation and stress tolerance, and conscientiousness. Regarding the appellant's employment, Dr. Ackerman Sinclair noted that he had been terminated from a restaurant in 2014 for making a racially charged joke and from a financial investment firm in 2017 for being 30 minutes late. Additionally, he was unemployed from January 2022 to June 2022 after he unsuccessfully tried to run his own business for 10 months. Further, he was vague about his employment dates as he commented that he does not always remember the details because he had lots of jobs and got the times mixed up. Dr. Ackerman Sinclair also found that there were serious concerns with the appellant's social competence as he admitted that he struggled with social cues, and this was hard to fix because he was unsure when this was happening. This was evidenced by the appellant stating that his family wanted him to become a Fire Fighter even more than he did while one of his family members indicated that it had great concerns about him being a Fire Fighter even to the point of refusing to answer a question about his suitability, which was extremely rare. However, Dr. Ackerman Sinclair noted that the appellant might have been aware of his family's ambivalence as the appellant had listed his brothers as references on a previous application but not on the current application. Dr. Ackerman Sinclair noted that the appellant was engaged in therapy since April 2022 because he was reluctant to get married and wondered if he had commitment issues. Additionally, the appellant indicated that he struggled with Attention Deficit Hyperactivity Disorder (ADHD) during his formative years but claimed he had been without medication for seven or eight years. Moreover, Dr. Ackerman Sinclair found that the appellant's application was sloppy and appeared to be rushed. Also, the appellant missed details and information throughout psychological written testing causing Dr. Ackerman Sinclair to conclude that the appellant likely struggles with an underlying and undiagnosed social disorder. Further, the appellant did not evidence the social competence or readiness for a full-time, highly rigorous and stressful position in public safety. Dr. Ackerman Sinclair indicated that the psychological test data supported the finding that the appellant was a "good fake" and presented an unrealistic positive image of himself. As a result, Dr. Ackerman Sinclair concluded that the appellant was not psychologically suitable for employment as a Fire Fighter.

The Panel's report also indicates that Dr. David Pilchman, evaluator on behalf of the appellant, conducted a psychological evaluation and found Dr. Ackerman Sinclair's report as representing a misperception of the appellant's character and competence. Dr. Pilchman stated that Dr. Ackerman Sinclair's report did not attempt to integrate the stress involved in the assessment process and that the appellant's lack of clarity in responses did not necessarily represent evasiveness or a lack of integrity as Dr. Ackerman Sinclair interpreted. Dr. Pilchman found the appellant to be exceedingly different than described in Dr. Ackerman Sinclair report. Further, Dr. Pilchman opined that the appellant's decision to initiate psychotherapy should not be construed as weakness or suggest pathology. A more complete oral interview revealed that the appellant was far from socially incompetent. Additionally, Dr.

Pilchman found that the appellant's frequent change of employment was evidence of his search for a proper future and fit and part of his maturation when he recognized that becoming a Fire Fighter was his ultimate goal. Dr. Pilchman noted that the certification by the appellant's brother challenged the suggestion that the appellant lacked social competence. Therefore, Dr. Pilchman concluded that the outcome of Dr. Ackerman Sinclair's report represented "the limits of the process as opposed to the candidate." As a result, in Dr. Pilchman's professional opinion, the appellant qualified as a positive candidate for the position of Fire Fighter with the Teaneck Fire Department.

Additionally, the Panel's report indicates that the appellant appeared before it. The Panel found that the appellant did not show signs of overt psychopathology and he answered questions in a cooperative manner. It discussed the appellant's employment history including the appellant's 2014 termination, which the appellant described as being due to making an "immature statement." Moreover, the appellant noted that he did not have any motor vehicle violations since a 2021 speeding ticket, and he had no points on his license. The appellant indicated that he had previously been diagnosed with ADHD and took medicine until age 22 but no longer felt impaired by the symptoms of ADHD. He explained that he left his ADHD medication off his Biological Summary for Dr. Ackerman Sinclair's report as he did not read the question as asking about it. Regarding his brother who did not offer a recommendation on his behalf, he said that he got along with his brother and lived with him without major problems.

As set forth by the Panel in its report, the evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The appointing authority's evaluator raised concerns about the appellant's social competence, emotional regulation, stress tolerance, and conscientiousness. Dr. Ackerman Sinclair noted the candidate's employment history, including his termination in 2014 for telling a racial joke. Additionally, Dr. Ackerman Sinclair expressed concerns about the appellant's vagueness in recalling employment dates, engagement in therapy, a sloppy job application and what she interpreted as "great concerns" that the candidate's family had about his suitability for the position which includes two brothers who are Teaneck Fire Fighters. The appellant's evaluator opined that the appellant's therapy did not suggest pathology, he was not socially incompetent, and he had an alternate explanation for his changes in employment. While the Panel noted the appellant's 2014 termination after making a racial joke, it found no other evidence of racial bias and it did not see this as a pattern that would psychologically disqualify him. Further, although the appellant believed that he was terminated from the financial investment firm for performance reasons, the background material did not indicate that he was let go for performance reasons. Therefore, the Panel found that although the appellant's work history was not outstanding, it was not so poor as being psychologically disqualifying. Regarding the appellant leaving off his ADHD medications of the Biological Summary form, the

Panel stated that “[w]e saw [M.D.’s] interpretation of this as concrete, but also note that this form does not ask specifically about medication for ADHD but does ask about other conditions.” Referring to the appellant’s brothers not recommending him for the position, one of his brothers submitted a certification which “unequivocally” recommended him for the position, while his other brother responded during the appellant’s background investigation that “he did not want to answer that question” and they did not get along. The Panel opined it could not draw further conclusion from this response and there was not enough information to characterize the appellant as having problems with social competence. Therefore, taking into consideration the psychological reports, the appellant’s presentation before the Panel, the test results and procedures and the appellant’s behavioral record in light of the Job Specification for Fire Fighter, the Panel found that the appellant was psychologically fit to perform effectively the duties of the position sought, and therefore, concluded that the action of the appointing authority should not be upheld. Accordingly, the Panel recommended that the appellant be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by Mark A. Tabakin, Esq., asserts that the Panel erred in finding that the appellant’s name should be restored to the subject eligible list by “cherry-picking” items from the psychological reports while casting a blind eye to other items. For example, Dr. Pilchman poorly attempts to justify the appellant’s responses by stating that Dr. Ackerman Sinclair did not attempt to integrate the stress involved with the assessment process. However, the appointing authority presents that if the appellant is unable to handle the stress of an assessment for the position, he is unlikely to manage the stress from the rigorous demands of firefighting. Additionally, the appointing authority contends that the Panel failed to analyze the facts and circumstances regarding the appellant’s untreated ADHD diagnosis which is a potential danger for the community and fellow Fire Fighters. The appointing authority states that Dr. Pilchman failed to recognize the challenges associated with the appellant’s untreated ADHD that includes concentration issues which raises concerns about the thoroughness of his report. The appointing authority provides that ADHD is a learning disability that can impact performance as a Fire Fighter. Further, the appellant’s job history, where he has failed to hold employment longer than 12 months, demonstrates that his untreated ADHD makes him unsuitable to be a Fire Fighter. The appointing authority emphasizes that while ADHD is not an automatic disqualifier for being a Fire Fighter, the appellant’s failure to seek proper treatment makes him a poor candidate. The appointing authority believes that the Panel failed to consider the appellant’s past unresolved trauma. It presents that the appellant indicated that the most traumatic experience in his life was the death of a good friend who overdosed from heroin, and he struggled with blaming himself for the incident. The appointing authority highlights that Fire Fighters frequently encounter drug-related emergencies and states that a candidate who has experienced the trauma that the appellant has may struggle in those situations. Further, the appellant stated during

his interview with Dr. Ackerman Sinclair that he could learn to improve his patience because he does not think that anyone can exercise patience when they are “under the gun or in pressure situations” which is concerning since Fire Fighters often face intense, time-sensitive emergencies. The appointing authority believes that the Panel erroneously concluded that there was not enough information to characterize the appellant as having social competence issues. However, the appellant self-reported that he had difficulty processing social cues because he was unsure when they are occurring. However, misunderstanding social cues can compromise teamwork in an emergency regarding communications with other Fire Fighters and the public. Further, it is undisputed that the appellant was terminated for making a racial joke, which further demonstrates his lack of social competence working with diverse Fire Fighters and the public, especially in Teaneck where there is a significant African-American and Hispanic or Latino population. Moreover, the appointing authority argues that the appellant’s lack of familial support and poor employment history are indicative of his lack of suitability to be a Fire Fighter. While the appellant stated that his family tradition of service as Fire Fighters provided him with familiarity with what it takes to be a Fire Fighter, the appointing authority provides that a candidate needs to be assessed based on individual merit. It reiterates that the appellant’s family initially expressing concern about his ability to be a Fire Fighter is extremely rare. The appointing authority highlights that one of his brothers did not want to answer whether the appellant would be a good Fire Fighter while the other brother said that he would be if he “toughens up.” Thereafter, one his brother’s submitted a certification in support of the appellant, but it believes that this was submitted after realizing how the initial comments may have negatively impacted his brother’s candidacy. The appointing authority states that close relatives provide a unique perspective on an individual's ability to handle stress, decision making, and interpersonal skills, and their responses demonstrate that there was enough information to conclude that the appellant lacks the social competence to be a Fire Fighter.

In his cross exceptions, the appellant asserts that the Panel correctly found that he should be reinstated to the subject eligible list. He claims that the appointing authority inaccurately stated that the Panel cherry-picked items in making its decision. Instead, the Panel clearly reviewed the documents produced by both parties in making its recommendation. The appellant believes that the appointing authority has misconstrued facts and inaccurately portrayed statements. For example, there is no medical professional that has indicated that the appellant is unqualified to be a Fire Fighter because he was diagnosed with ADHD and is not taking medication for it. To the contrary, the appellant certified that he has found a more effective way to deal with this condition. Further, the Panel reviewed the appellant’s work history and found that it was not a disqualifier for being a Fire Fighter. Moreover, he states that the appointing authority concocted that the appellant has unresolved trauma as this was never stated by any doctor and there is no evidence to support this. Additionally, he presents that the Panel correctly concluded that there was

insufficient information to find that he lacked social competence. The Panel noted that the appellant's behavior during its interview with him did not show overt psychopathology and found that although the appellant made a racial joke 10 years ago, there was no other evidence of racial bias, and it did not see a pattern that would psychologically disqualify him. Regarding his family's assessment, the appellant presents that his Fire Fighter brother certified that he unequivocally recommended him to be a Fire Fighter, which demonstrates that his family does support his Fire Fighter candidacy.

CONCLUSION

The Job Specification for the title of Fire Fighter is the official job description for such positions within the Civil Service system. According to the specification, Fire Fighters are entrusted with the safety and maintenance of expensive equipment and vehicles and are responsible for the lives of the public and other officers with whom they work. Some of the skills and abilities required to perform the job include the ability to work closely with people, including functioning as a team member, to exercise tact or diplomacy and display compassion, understanding and patience, the ability to understand and carry out instructions, and the ability to think clearly and apply knowledge under stressful conditions and to handle more than one task at a time. A Fire Fighter must also be able to follow procedures and perform routine and repetitive tasks and must use sound judgment and logical thinking when responding to many emergency situations. Examples include conducting step-by-step searches of buildings, placing gear in appropriate locations to expedite response time, performing preparatory operations to ensure delivery of water at a fire, adequately maintaining equipment and administering appropriate treatment to victims at the scene of a fire, *e.g.* preventing further injury, reducing shock, restoring breathing. The ability to relay and interpret information clearly and accurately is of utmost importance to Fire Fighters as they are required to maintain radio communications with team members during rescue and firefighting operations.

The Civil Service Commission (Commission) has reviewed the Job Specification for this title and the duties and abilities encompassed therein and acknowledges the appointing authority's concerns regarding the appellant's 2014 termination after making a racial joke as well as other employment history, his family's assessment of his candidacy, and his social competence. However, the submissions and findings of both Drs. Ackerman Sinclair and Pilchman, as well as the appellant's appearance before the Panel, were thoroughly reviewed by the Panel prior to it making its Report and Recommendation. The Panel's observations regarding the appellant's appearance before the Panel are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants. Referring to the appellant's employment history, other than the 2014 incident, it found no other evidence of racial bias and it did not see this as a pattern that would psychologically disqualify him. Further, although the appellant

believed that he was terminated from the financial investment firm for performance reasons, the background material did not indicate that he was let go for performance reasons. Therefore, the Panel found that although the appellant's work history was not outstanding, it was not so poor as being psychologically disqualifying. Regarding the appellant's family's assessment of his candidacy and his social competence, one of his brother's submitted a certification which "unequivocally" recommends him for the position, while his other brother responded that "he did not want to answer that question" and they did not get along. Therefore, the Panel opined it could not draw further conclusion from this response and there was not enough information to characterize the appellant as having problems with social competence. Thus, the Commission finds that the record, when viewed in its entirety, supports the findings of the Panel that the appellant is psychologically fit to serve as a Fire Fighter. Further, the Commission is mindful that any potential issues concerning the appellant's social competence and work habits can be addressed during his working test period.

Therefore, having considered the record, including the Job Specification for Fire Fighter and the duties and abilities encompassed therein, 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 conclusion as contained in the Panel's Report and Recommendation and grants the appellant's appeal.

Regarding the appellant's list bypass appeal, the appellant's name was certified on December 6, 2021 (OL211183) for a position as a Teaneck Fire Fighter. The first, third, fifth and sixth positioned candidates were appointed. Further, the appellant, the eighth position candidate, was bypassed, and the ninth positioned candidate was appointed. The appellant appealed his bypass, and the matter was placed on hold pending the resolution of his psychological disqualification appeal. A review of the background report indicates that the appellant was bypassed because he failed to complete sections of his employment application involving vehicle information, motor vehicle summonses issued, current dating partner, financial obligations, and examination score. Further, his writing sample was poorly written including grammatical errors and cross-outs. Additionally, the appellant was terminated in 2014 as described above. Moreover, he was unemployed, and his last employment was at a temporary agency where he was laid off in November 2020. Therefore, the record indicates that the appellant was bypassed for legitimate business reasons. Further, there is nothing in the record that indicates that the bypass was based on discrimination or any other illegal or other invidious reason. Consistent with *N.J.A.C. 4A:4-4.8(a)3*, an appointing authority has selection discretion under the "Rule of Three" to appoint a lower ranked eligible absent any unlawful motive. *See In the Matter of Michael Cervino* (MSB, decided June 9, 2004). *Compare, In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984) (Hearing granted for individual who alleged that bypass was due to anti-union animus); *Kiss v.*

Department of Community Affairs, 171 N.J. Super. 193 (App. Div. 1979) (Individual who alleged that bypass was due to sex discrimination afforded a hearing). Consequently, there is no basis to grant the appellant's list bypass appeal.

ORDER

The Commission finds that the appointing authority has not met its burden of proof that M.D. is psychologically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that the eligible list for Fire Fighter (M1873W), Township of Teaneck, be revived and the appellant's name be restored. 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 the appellant be granted a retroactive date of appointment to January 3, 2023, 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.

Further, the appellant's appeal of his list bypass is denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 28TH DAY OF FEBRUARY, 2024



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