

## RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4725-14T2

IN THE MATTER OF T.L.,  
CORRECTION OFFICER RECRUIT  
(S9988M), DEPARTMENT OF  
CORRECTIONS.

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Submitted March 1, 2017 – Decided September 15, 2017

Before Judges Fuentes and Simonelli.

On appeal from the New Jersey Civil Service  
Commission, Docket No. 2014-1176.

Chatarpaul Law Offices, P.C., attorneys for  
appellant T.L. (Jay J. Chatarpaul, on the  
brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent Civil Service  
Commission (Melissa H. Raksa, Assistant  
Attorney General, of counsel; Pamela N.  
Ullman, Deputy Attorney General, on the  
brief).

PER CURIAM

Appellant T.L. seeks that this court reverse the decision of the Civil Service Commission (Commission) that found her psychologically unfit to perform the duties of a Corrections Officer in the Department of Corrections and consequently removed

her name from the list of eligible candidates. Mindful of our standard of review, we affirm.

Appellant's psychological fitness to perform the duties of a Corrections Officer was first brought before the Medical Review Panel on August 24, 2014. The Panel issued its report on August 28, 2014. The parties thereafter filed their exceptions and cross-exceptions. The report included the psychological evaluation report by Dr. Matthew Guller on behalf of the appointing authority completed on August 2, 2013, based on a clinical interview he conducted on July 31, 2013. "The purpose of the examination was to determine the presence, if any, of emotional or intellectual characteristics that would detrimentally affect the subject's performance in the role of corrections officer."

Dr. Guller described appellant as a "twenty-six-year-old single female." Appellant responded to the evaluation "on-time and was well-groomed in a professional manner." Her demeanor was "friendly and upbeat." She had been unemployed at the time for seven months, but was taking four college courses. She had served in the United States Marine Corps from August 2005 to December 2012. Appellant was deployed to Iraq for one tour of duty from December 2006 to January 2008, and served another tour of duty in Afghanistan from June 2010 to December 2010. She denied having had any traumatic experiences while serving in the Marines.

However, she was a passenger in a Humvee that "flipped" three times. Appellant received an Honorable Discharge from the Marines at the rank of E-5 and specialized in Supply Clerk Maintenance. She was never disciplined.

In her life as a civilian, Dr. Guller noted that appellant never had any problems with law enforcement. She confirmed that she appeared in a police report when her roommate was murdered by her fiancée while the victim was pregnant. Appellant was not a suspect in the case. Dr. Guller nevertheless noted that appellant "described this situation in a bizarrely nonchalant, almost joking manner[.]" Appellant also told Dr. Guller that she was receiving a disability pension from the military "but was quite vague" about the reasons that rendered her eligible to receive this monetary assistance. She believed it was connected to "her back, ankle and knees." When Dr. Guller asked if the pension was related to Post-Traumatic Stress Disorder (PTSD), appellant responded: "I don't recall . . . I think they said I had a mild case of that."

In response to Dr. Guller's request, appellant provided documentation showing "she is collecting a 60% disability, with 10% assigned to each of the following: her back, right ankle, and Tinnitus. There is an additional 30% disability assigned for 'Adjustment disorder with anxiety with dipsomania; non-specific.'" According to Gullere, in the Career Occupational Preference System

(COPS) test, appellant "scored extremely high on a number of categories that suggest problems, including paranoid orientation (99th Percentile), depression (95th percentile), authoritarianism (94th percentile), integrity/dishonesty (99th percentile), and aggression (95th percentile)." Based on these findings and impressions, Dr. Guller did not recommend appellant for appointment as a corrections officer.

Clinical forensic psychologist Dr. David Gomberg interviewed appellant on October 5, 2013, and administered several psychological examinations on February 6, 2014. She reported to Dr. Gomberg the same experiences she discussed with Dr. Guller involving the incident with the Humvee. Dr. Gomberg characterized appellant as confident, hardworking, industrious, organized, and responsible. He concluded that she was "eminently qualified" for employment as a Corrections Officer. Both sides filed exceptions to the psychologists' conclusions and findings.

The Medical Review Panel "is composed of professionals in the medical or psychological field." N.J.A.C. 4A:4-6.5(g). Here, the Panel that reviewed appellant's appeal consisted of two psychologists and one physician. The report the Medical Panel submitted to the Commission "was concerned about the casual nature of [appellant's] approach to both understanding of and responding appropriately to her disability status." The Panel noted that

appellant's willingness to continue to collect benefits based on having sustained service-related injuries, while at the same time claiming to be fit to work in a correctional institution, "was not consistent with a role in law enforcement."

After reviewing the evaluations and reports of both Dr. Guller and Dr. Gomberg, the Medical Review Panel concluded that "the applicant is mentally unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld." The Commission was not persuaded by appellant's exceptions and ultimately adopted the Medical Review Panel's recommendations. Of particular concern to the Commission was appellant's dipsomania, which it found was "not a good match for working in a correctional environment." The Commission found that appellant

has failed to provide any evidence that she is now free from this disorder as she claims. Further, the Commission has concerns that if the appellant was free from dipsomania as she claims, that she continues to collect pension from the military for this condition. This, in and of itself, raises integrity issues for someone who aspires to a career in law enforcement and would constitute sufficient cause for her removal from consideration.

Appellant now argues before this court that the Commission's decision was arbitrary, capricious and discriminatory. Appellant claims the Commission wrongly upheld the Department of

Correction's decision to discriminate against appellant based on her disability. The Attorney General, on behalf of the Commission, argues the Department of Corrections, as the appointing authority, met its burden under N.J.A.C. 4A:4-6.3(b) of proving that appellant was psychologically unfit to effectively perform the duties of the position.

The Commission has the authority to remove a candidate from the eligible list if the evidence shows the person is "psychologically unfit to perform effectively the duties of the title." N.J.A.C. 4A:4-6.1(a)(3). "The use of psychological tests to predict or evaluate employee job performance is a recognized part of the American workplace." In re Vey, 124 N.J. 534, 540 (1991). The judicial capacity to review an administrative agency's decision is limited to three inquiries:

(1) whether the agency's action violates express or implied legislative policies; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether, in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made upon a showing of the relevant factors.

[R & R Mktg., L.L.C. v. Brown-Forman Corp., 158 N.J. 170, 175 (1999).]

Here, the record shows the Commission carefully considered the parties' presentations and the recommendations of the Medical

Review Panel and reached a final determination about appellant's psychological fitness that is well-supported by the evidence. We discern no legal basis to disturb it.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION