

**Matter of Bowie v New York City Civil Serv.
Comm.**

2008 NY Slip Op 32727(U)

September 29, 2008

Supreme Court, Queens County

Docket Number: 30810/2007

Judge: Lawrence V. Cullen

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MEMORANDUM

SUPREME COURT : QUEENS COUNTY
IA PART 6

In Matter of the Application of X
LaSHAWN C. BOWIE,

INDEX NO.: 30810/2007

Plaintiff,

BY: **CULLEN, J.**

- against -

MOTION DATE: 7/1/08

NEW YORK CITY CIVIL SERVICE
COMMISSION,

MOTION CAL. NO.: 2

Defendant.

MOTION SEQ. NO.: 1

X

In this Article 78 proceeding, petitioner pro se LaShawn C. Bowie seeks a judgment reversing the New York City Civil Service Commission's determination of August 15, 2007, which affirmed the determination of the New York City Department of Corrections that she is psychologically unqualified for the title of Corrections Officer.

Petitioner applied for the position of Correction Officer announced under NYC Civil Service Examination No. 4002, passed the written examination and was ranked No. 1797 on the civil service list of eligible candidates established by that examination. All candidates who passed said examination were subject to a pre-employment background investigation to determine the character, medical and psychological suitability of the Correction Officer candidates. Petitioner was administered a number of psychological tests and was interviewed by a Department of Corrections (DOC)

staff psychologist, David A. Safran, Ph.D., on January 17, 2006. On the day of the interview, petitioner authorized the release of her pre-employment investigation file in connection with a prior application for the position of school safety officer/agent with the New York Police Department, for which she was found psychologically unsuitable for that position in 2001. Dr. Safran received said report from the New York City Police Department on August 24, 2006. On August 29, 2006, Dr. Safran reviewed the results of petitioner's psychological tests and interview and determined that her personality characteristics were inconsistent with those sought for the position of correction officer. In his report, Dr. Safran cited his reasons for disqualifying petitioner as "poor credibility, poor insight and judgment, poor impulse control, including aggressive behavior, poor anger control, poor stress tolerance, and poor interpersonal skills." Dr. Safran relied upon the objective psychological test results, petitioner's employment history, her past arrests and her interpersonal interactions with others.

In a notice dated September 5, 2006, petitioner was informed of the DOC's determination that she was psychologically **"NOT QUALIFIED"** for title of Correction Officer. The DOC stated that its determination was "based upon the evaluation of your psychological tests and interview, which found personality traits incompatible with the unique demands of the position of Correction

Officer. The evaluation does not reflect your suitability for other employment." Petitioner was informed of her right to appeal said determination within 30 days of the letter, and she was informed that upon her selection of "psychiatric (sic) or psychologist" she was required to submit a notarized form authorizing the release of records to a psychiatrist or psychologist, along with the name and address of the psychiatrist or psychologist.

On September 13, 2006 petitioner filed an appeal with the Civil Service Commission (CSC). On September 14, 2006, the CSC requested that she submit medical documentation in support of her appeal, with a copy to the CSC within 60 days. This letter further advised petitioner that upon receipt of said documents, the DOC would be required to furnish all documents, including the results of any further examination, factual statements, affidavits and other legal arguments to the CSC, and that the CSC would then review the record and determine what further action was required. The letter stated that "[o]n the basis of the record before it, the Commission will issue a determination on the merits or schedule a hearing or a status conference on the appeal."

In support of her appeal petitioner submitted a psychological evaluation by Marc Janoson, Ph.D, a psychologist, dated November 18, 2006, which contained the results of his interview with petitioner, a summary, a rebuttal of the reasons given by the DOC for disqualification, and the results of two

psychological inventories he administered to the petitioner on September 21, 2006. In his report, Dr. Janoson disagreed with Dr. Safran's assessment, and recommended that petitioner's disqualification be overturned.

On December 28, 2006 Barry Protter, Ph.D, a psychologist, and outside consultant retained by the DOC in connection with petitioner's appeal, reviewed Dr. Safran's interview and report, the tests he administered and the documents relied upon the DOC, as well as the report of Dr. Protter and the tests he administered. After reviewing all of these documents, Dr. Protter recommended that Ms. Bowie be disqualified as psychologically unsuitable for the position of correction officer.

Dr. Protter stated that Ms. Bowie:

"was psychologically disqualified because of a) previous disqualification from NYPD, centering on poor insight and stress tolerance, poor interpersonal skills; b) determination of "a", above, inferred from problematic academic and vocational history which includes assault accusation in her P.O. job('94); not adhering to dress code in her former job; forced to leave his(sic) job at Chase because of too much stress from the supervisor who was monitoring her performance; not following through with educational endeavors; c) credibility issues in her representation of her previous job performance reinforced by significant L and K scores in MMPI; d) anger management problems, exemplified by orders of protection issued against her; domestic violence issues which resulted in charge of assault and conviction; and earlier mandated anger management therapy."

"The Appeals report by Marc Janoson, Ph.D., was largely a series of test profiles (PAI) comparing her to other potential corrections officers candidates. For example, she compares moderately favorably in the area of job performance, 26% probability of having background problems related to job performance vs. 36% as a base rate of large numbers of corrections job candidates. The report does not include concrete specifics of the candidate's own background and her own unique history. Considering the total picture and the pattern of difficulties, though, I am inclined to concur with the D.O.C. disqualification of the candidate."

On January 7, 2007 David Safran recommended to the DOC that its original disqualification of Ms. Bowie for the position of Correction Officer be affirmed, based upon his review of a complete record of the tests and interviews.

The CSC, after reviewing the results of the clinical testing of Ms. Bowie, the report of Dr. Safran, the evaluation of Dr. Janoson, and the report of Dr. Protter, issued a notice dated August 15, 2007, affirming the DOC's determination psychologically disqualifying the petitioner from the position of Correction Officer. The CSC determined that the record before it established a rational basis for the DOC's conclusion that petitioner was not psychologically suited for the position of Correction Officer and that the record did not raise any issue that required a hearing.

Ms. Bowie received a copy of the CSC's determination and thereafter commenced this Article 78 proceeding in which she seek to vacate the CSC's determination of August 15, 2007. Petitioner

asserts that she was not provided with an explanation as to why her appeal was denied, and why she was not granted a hearing.

Respondent CSC asserts that the petition fails to state a cause of action and requests that the petition be dismissed.

It is well settled that the court's power to review an administrative action is limited to whether the determination was warranted in the record, has a reasonable basis in law, and is neither arbitrary nor capricious (see Scherbyn v Wayne-Finger Lakes Board, 77 NY2d 753, 758 [1991]; Matter of Pell v Board of Educ., 34 NY2d 222, 230-231 [1974]; Westmoreland Apt. Corp. v N.Y. City Water Bd., 294 AD2d 587, 588 [2002]). The "judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body" (Ostrer v Schenck, 41 NY2d 782, 786 [1977]; see also Pell v Board of Education, *supra* at 231 [1974]).

An appointing authority has wide discretion in determining the fitness of candidates, which discretion is particularly broad in the hiring of law enforcement officers, to whom high standards may be applied (see Matter of Little v County of Westchester, 36 AD3d 616 [2007]; Matter of Verme v Suffolk County Dept. of Civ. Serv., 5 AD3d 498 [2004]). As long as the administrative determination is not irrational or arbitrary, this court will not interfere with it (*id.* at 499, see Matter of Little v County of Westchester; Matter of Thomas v Straub, 29 AD3d 595, 596 [2006]; Winnegar v County of Suffolk, 13 AD3d 382 [2004]; Matter of

Frederick v Civil Serv. Commn. of County of Schenectady,
175 AD2d 428 [1991]).

The fact that the opinion of petitioner's privately retained psychologist is contrary to that of both the DOC's psychologist respondent's CSC's psychologist is not controlling (Matter of Keryc v Nassau County of Civil Service Service Comm., 143 AD2d 669 [1988]). It is not for the courts to choose between diverse professional opinions (Matter of Brussel v Lo Grande, 137 AD2d 686 [1988]). Therefore, where there is any rational basis or credible evidence in support of an agency's determination, the decision will be upheld (Matter of Curcio v Nassau County Civil Service Service Commission, 220 AD2d 412 [1995]).

Here, the evidence in the record establishes that respondent CSC's determination has a rational basis and is supported by substantial evidence. Contrary to petitioner's assertions, the CSC's determination of August 15, 2007 fully informed her of the reasons for her disqualification for the position of Correction Officer.

Accordingly, petitioner's request to vacate respondent's determination of August 15, 2007 is denied and the petition is dismissed.

Settle judgment.

Date: September 29, 2008

LAWRENCE V. CULLEN, J.S.C.