

Alma v New York City Civ. Serv. Commn.
2020 NY Slip Op 32816(U)
August 27, 2020
Supreme Court, New York County
Docket Number: 155746/2019
Judge: W. Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 155746/2019

CARMEN ALMA,

MOTION DATE March 26, 2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY CIVIL SERVICE COMMISSION, NEW
YORK CITY POLICE DEPARTMENT

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 17, 18

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Petitioner Carmen Alma brings this special proceeding pursuant to Article 78 to challenge a determination made by the New York City Civil Service Commission and New York City Police Department (“NYCSC” and “NYPD”; collectively, “Respondents”) disqualifying her for potential employment as a New York City Police Officer because she was psychologically unfit for the position. Respondents oppose the Petition.

BACKGROUND

Petitioner took and passed examination #4323 to be a police officer and was selected for further processing, which included a psychological screening by NYPD’s Psychological Services Section. The psychological screening included written testing and an interview with Dr. Michelle Casarella on August 14, 2017. Dr. Casarella’s notes indicated that she thought Petitioner “presented as confused, guarded, and evasive in this initial meeting and elicited particular concern about her psychological history.” (NYSCEF Doc No. 16 at 102.)

Petitioner complied with a request to submit further special education and psychiatric treatment records, which were then reviewed by Dr. Amy Beebe during a reevaluation on January 29, 2018. (*Id.*) Dr. Beebe noted that Petitioner “still appeared confused and guarded throughout her second interview” and that there were “[d]iscrepancies between her self-report and records . . . [which] raised serious concerns about her credibility, insight, and proclivity for depression, and her unstable school history raised additional concerns about her stress tolerance.” (*Id.*) During the interview, Petitioner denied having ever taken psychotropic medication for depression or insomnia, despite the fact that the documentation she provided demonstrated that she had “19 claims for the antidepressant imipramine, 12 claims for the antidepressant Prozac, and 19 claims for Hydroxyzine, an antihistamine with sedative and anxiolytic effects.” (NYSCEF Doc No. 14 at ¶ 34.) Dr. Beebe further found that Petitioner was “guarded, with poor credibility and low insight” and that her “inability to discuss her extensive psychological history (or even her experience of universal human emotions) compromised the undersigned’s ability to fully assess her history of function and rule out psychological concerns.” (*Id.* at ¶ 37.)

Respondent mailed a Notice of Proposed Disqualification dated March 8, 2018 to Petitioner, stating that she was “not psychologically suited to the unique demands and stresses of employment as a Police Officer pursuant to Civil Service Law §§ 50(4)(a) and/or 50(6)[.]” (NYSCEF Doc No. 3.) Petitioner then underwent an independent psychological evaluation with Dr. Melissa Corpus. (NYSCEF Doc No. 4.) Dr. Corpus found, in pertinent part, that:

The disqualification summary appears to stigmatize her anger issues and makes baseless far-reaching claims that her issues with anger are somehow prodromal signs of psychological maladjustment as an adult. . . .

It is incumbent upon the evaluator to consider the possibility of bullying, which was not queried in the clinical interview. Further, it is an ethical duty of the evaluator to demonstrate culturally competent interview skills and recognize that individuals range in psychological awareness and insight (e.g., one’s ability to make connections between events in their lives). Indeed, Ms. Alma demonstrates

remarkable resiliency, not maladaptive coping, as her childhood upbringing consisted of reality-based psychosocial stressors of poverty (e.g., mother was a recipient of welfare and food stamps), parental low educational attainment, her mother earned low wages (she worked in a factory until her late adolescence), and Ms. Alma suffered from diagnosed learning disabilities and received special education. . . .

Again, evidence from the clinical interview and collateral data was inappropriately distorted and erroneously utilized to suggest that Ms. Alma has a propensity for mental health problems. . . .

As such, the evaluators assumption that Ms. Alma's self-report of mental health history is "extremely unreliable" is not due to her reticence, intention to mislead, and/or intention to guard previous mental health information. It is an incredibly unfair allegation, rooted in lack of cultural competency, to suggest her confusion about medication management and mental health history raises 'serious concerns about her credibility.

(*Id.* at 5-7.) Ultimately, Dr. Corpus strongly recommended that Ms. Alma be "reconsidered for the position given the additional collateral evidence, results from testing, behavioral observations, and clinical interview. (*Id.* at 7.)

Dr. Corpus' independent examination and findings were reviewed by NYPD's Psychological Service Section Deputy Director, Dr. Edward Fitzsimmons. (NYSCEF Doc No. 16 at 386.) In concluding that Petitioner's independent examination did not refute the original recommendation of disqualification, Dr. Fitzsimmons stated that:

[t]his new information does not adequately address or refute the serious findings of Dr. Beebe, outlined in her report. Serious concerns remain about Cd Alma's coping skills, stress tolerance, proclivity for depression and anxiety, and poor credibility. She told Dr. Beebe that she never experienced depression, anxiety, or family conflicts at any point, and she adamantly denied ever taking any psychiatric medications. This is directly contradicted by documents received. Dr. Corpus opines that "there is no proof that Ms. Alma ingested psychotropic medications that were prescribed," (p.5) but her statement is in no way convincing. It is most telling that Dr. Corpus did not conclude at the end of her evaluation, that she found Cd Alma to be psychologically suitable for police work. She merely requested a re-evaluation of her by us. Cd Alma lacks the requisite psychological abilities, to meet the high demands of this very responsible and stressful public safety position with firearms.

(*Id.*)

Petitioner was advised that NYPD had made a final determination by Notice of Disqualification dated October 30, 2018. (NYSCEF Doc No. 5.) Petitioner appealed that determination the next day but the New York Civil Service Commission upheld the disqualification by decision dated February 11, 2019 after “carefully review[ing] the entire record and consider[ing] the arguments presented by both parties.” (NYSCEF Doc No. 7.)

Petitioner then commenced this Article 78 proceeding, alleging that the NYCSC’s determination was arbitrary and capricious because it disregarded “[1]. that since graduation from high school twenty years ago, Petitioner has not been challenged with any mental illness,” “[2.] that despite having a history of learning disabilities . . . Petitioner has completed 60 college credits . . . [and] maintained an exemplary work record[.]” (NYSCEF Doc No. 1 at ¶ 13.) Additionally, Petitioner alleges that the NYPD “stigmatized Petitioner’s childhood anger issues and made baseless, far-reaching assumptions that her issues with anger as a child became full blown psychological issues as an adult.” (*Id.* at ¶ 14.) Petitioner states that the difficulty she had in recalling specifics about her mental health should not amount to a finding that she lacks credibility.

Respondents oppose the Petition, arguing that it fails to allege facts warranting a reversal of the NYSC’s decision.

DISCUSSION

In an Article 78 proceeding challenging a decision by the New York Civil Service Commission, courts may only determine if the decision was arbitrary and capricious. (*Matter of City of New York v New York City Civ. Serv. Comm.*, 61 AD3d 584, 584 [1st Dept 2009], citing *Matter of Valle v Buscemi*, 233 AD2d 334, 334 [2d Dept 1996].) “The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact.’” (*Matter of Pell v Board of Educ. of Union*

Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974].) “An appointing authority has wide discretion in determining the fitness of candidates . . . [and] [t]his discretion is particularly broad in the hiring of law enforcement officers, to whom high standards may be applied.” (*Matter of Verne v Suffolk County Dept. of Civ. Serv.*, 5 AD3d 498, 498 [2d Dept 2004] [internal citations omitted].)

Here, NYCSC’s decision was clearly not arbitrary and capricious. Petitioner was evaluated by Dr. Casarella on August 14, 2017. She was evaluated further by Dr. Beebe on January 29, 2018. Dr. Corpus’ independent examination report was then considered by both Dr. Fitzsimmons and Dr. Heather Jonas, the Director of the NYPD Psychological Assessment Section. (NYSCEF Doc No. 16 at 150.) Drs. Fitzsimmons and Jonas both determined that Dr. Corpus’ report did not sufficiently offset the original concerns noted by Drs. Casarella and Beebe. Specifically, both noted that Dr. Corpus merely recommended a reevaluation rather than fully concluding that Petitioner was psychologically suitable for police work.

Additionally, Petitioner’s argument that Respondents disregarded certain facts, including that “Petitioner has not been challenged with any mental illness [since high school]” and that “Petitioner has completed 60 college credits” are not supported by the record. The psychologists and reviewers explicitly stated that the “basis for the disqualification rests heavily on [Petitioner’s] early history (ages 8-17) of counseling and prescriptions for psychotropic medications.” (*Id.* at 156; 162; 340; 342; 381.) Further, the psychologists clearly had a full record of Petitioner’s education record, including Dr. Beebe, who noted that that where “most [Police Officer] candidates attain 60 credits within 2 years’ time, [Petitioner’s] credits were earned over the course of 16 years and 3 academic institutions.” (NYSCEF Doc No. 8 at 4.)

Lastly, in finding Dr. Corpus' report as insufficient to rebut the initial determination of the NYPD, Drs. Fitzsimmons and Jonas stated that Dr. Corpus' assertion that Petitioner may not have taken her prescribed medication to be inconsequential because that did not assuage the fact that a medical professional deemed such medication to be warranted. (NYSCEF Doc No. 16 at 404.) Dr. Jonas also stated that Petitioner's ability to serve as sales associate at Time Warner Cable for 6 years is not a clear indicator that she would be psychologically fit to be a police officer because the demands and responsibility in that role are much higher.

It is well settled that "[a]n appropriate authority has wide discretion in determining the fitness of candidates. That discretion is particularly broad in the hiring of persons for positions of law enforcement, to whom high standards may be applied." (*Needleman v. County of Rockland*, 270 A.D.2d 423, 424, 704 N.Y.S.2d 887 [2d Dept 2000] [internal citations omitted]; accord *Matter of Shedlock v. Connelie*, 66 A.D.2d 433, 414 N.Y.S.2d 55 [3d Dept], aff'd 48 N.Y.2d 943, 401 N.E.2d 217, 425 N.Y.S.2d 95 [1979]; see also *Conlon v. Comm'r of Civ. Serv. of County of Suffolk*, 225 A.D.2d 766, 640 N.Y.S.2d 145 [2d Dept 1996].) "In determining whether a candidate is medically qualified to serve as a police officer, the appointing authority is entitled to rely upon the findings of its own medical personnel, . . . and the judicial function is exhausted once a rational basis for the conclusion is found." (*Matter of Thomas v. Straub*, 29 A.D.3d 595, 596, 818 N.Y.S.2d 90 [2d Dep't 2006].)

Here, Petitioner has failed to meet her burden of establishing that the New York Civil Service Commission's February 11, 2019 decision affirming the New York City Police Department's determination that Petitioner is not psychologically suited to serve as a police officer, was arbitrary or capricious, without a rational basis, or for an impermissible reason. Based

on a review of the record, the court finds that there was a rational basis to support the determination that Petitioner was not qualified for the position. Accordingly, it is hereby

ADJUDGED that the application is denied and the Petition is dismissed, without costs and disbursements to respondent.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

08/27/20
DATE


W. FRANC PERRY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE