

Matter of City of New York v New York City Civ. Serv. Commn.
2011 NY Slip Op 31487(U)
June 3, 2011
Sup Ct, NY County
Docket Number: 403331/10
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

CYNTHIA S. KERN
J.S.C.

PRESENT:

PART 52

Index Number : 403331/2010

IN RE: CITY OF NEW YORK

vs

NEW YORK CITY CIVIL SERVICE

Sequence Number : 001

ARTICLE 78

INDEX NO. 403331/10
MOTION DATE _____
MOTION SEQ. NO. 01
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided in accordance with the annexed decision.*

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 6/3/11

CK
CYNTHIA S. KERN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
In the Matter of the Application of

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, EDNA WELLS-HANDY, as
Commissioner of the New York City Department of
Citywide Administrative Services and RAYMOND
KELLY as Commissioner of the New York City Police
Department,

Index No. 403331/10

Petitioners,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

THE NEW YORK CITY CIVIL SERVICE
COMMISSION and GIOVANNI AMATO,

Respondents.
-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioners brought this petition pursuant to Article 78 of the Civil Practice Law and
Rules ("CPLR") seeking to reverse a determination made by the New York City Civil Service
Commission ("CCSC") dated July 30, 2010. In this determination, CCSC overturned the
decision of the New York City Police Department ("NYPD") which found applicant Giovanni

Amato ("Amato") psychologically unfit for the position of Police Officer, Exam No. 6001. For the reasons set forth below, the petition is hereby granted.

The relevant facts are as follows. Between August 1, 2005 and July 31, 2009, Amato was enlisted as a member of the United States Marine Corps. ("USMC"). Between 2006 and 2008, Amato completed two tours of duty in Iraq. On or about March 18, 2009, Amato filed a disability claim with the United States Department of Veterans Affairs ("VA"). Amato underwent three separate examinations to process his disability claim, including a VA-contracted mental health examination conducted on April 29, 2009 by Dr. Edward Rhoads. Dr. Rhoads diagnosed Amato with post-traumatic stress disorder directly related to his military service. In coming to his conclusion, Dr. Rhoads took into account Amato's self-reported symptoms of problems sleeping, nightmares, anxiousness, being tense, startling easily, being hypervigilant, experiencing intrusive memories, depression and forgetfulness. Dr. Rhoads determined that Amato's psychiatric symptoms were "mild or transient but cause occupational or social impairment with decrease in work efficiency and occupational tasks only during periods of significant stress. As a result of this evaluation, the VA approved Amato's disability claim for 10 percent compensation of \$376.00 per month.

On or about March 30, 2006, Amato took Civil Service Examination No. 6001 for the position of New York City Police Officer in Camp Lejune, North Carolina. New York City Department of Citywide Administrative Services ("DCAS"), a mayoral agency of the City, is charged with investigating and certifying or decertifying applicants or candidates for positions in the civil service of the City of New York. In determining the fitness of candidates for the position of police officer, DCAS has delegated its powers to NYPD. As a part of the application process,

NYPD required Amato to pass a psychological examinations to qualify for a police officer position. In this regard, on October 13, 2009, Amato was examined by Scott Wheeler, M.S., an NYPD staff psychologist who determined that Amato “not psychologically suitable for police work.” Wheeler stated in his report that his reasons for the decision to disqualify Amato were based on the symptoms resulting from his Post-Traumatic Stress Disorder (“PTSD”). Wheeler relied on his interview of Amato as well as the VA medical records which indicated that Amato experiences nightmares, is hypervigilant and has easily accessible and intrusive stressful memories. Wheeler also noted that Amato stated that he experienced flashbacks about twice each week. Wheeler further noted that police work can give rise to significant stress, which may result in prolonged or worsening of his PTSD and mood symptoms.

On November 16, 2009, Edward Fitzsimmons, Ph.D, a supervising psychologist, reviewed Dr. Wheeler’s determination and sustained his decision to reject Amato’s candidacy as an NYPD police officer. On January 5, 2010, Amato was informed of his disqualification from candidacy for the position of police officer on psychological grounds. On or about January 27, 2010, Amato appealed NYPD’s determination to CCSC. In connection with his appeal, Amato underwent a private psychological evaluation by Dr. Mark Lerner, Ph.D., a psychologist of Amato’s own choosing on February 1, 2010 and May 19, 2010. Dr. Lerner determined that clinical and objective personality data from his evaluation indicated that there was no evidence of psychological impairment or psychopathology and that he did not see any reason to psychologically disqualify Amato as a candidate for an NYPD police officer position. On June 10, 2010, NYPD conducted another review of Amato’s disqualification taking into account the new report provided by Dr. Lerner. After considering Dr. Lerner’s report, Dr. Eloise M.

Archibald, Director of NYPD's Psychological Services Section, sustained Amato's disqualification.

CCSC held a hearing with respect to the appeal on July 27, 2010. At this hearing, over the objections of NYPD's counsel, CCSC required the NYPD to put on its case first. CCSC also accepted new evidence from Amato and Dr. Lerner at the hearing and conducted a *de novo* review of the record. On July 30, 2010, CCSC issued a decision reversing NYPD's determination to disqualify Amato from candidacy for a police officer position and finding Amato qualified for a police officer position. In coming to its conclusions, CCSC considered the new evidence it gathered at the appeals hearing. On November 30, 2010, NYPD filed an Article 78 petition with this court seeking a reversal of CCSC's determination on the grounds that it was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious and an abuse of discretion.

Article 7803(3) of the CPLR grants this court jurisdiction to review whether an administrative agency's determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1st Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis." *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep't 2005); see *Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)("[r]ationality is what is reviewed under both the substantial

evidence rule and the arbitrary and capricious standard.”) “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.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the court finds that CCSC’s ruling reversing the determination of NYPD was made in violation of lawful procedure. In *Matter of the City of New York v New York City Civil Service Com’n [Matter of Ciacciullo]*, 20 A.D.3d 347, 348 (1st Dept 2005), *aff’d on other grounds*, 6 N.Y.3d 855 (2006), a retired police officer who was found unqualified for reinstatement as a police officer on psychological grounds by NYPD appealed the disqualification to the CCSC. CCSC reversed the decision of NYPD and reinstated the police officer. The Supreme Court reversed the decision of the CCSC and reinstated the determination of NYPD. On appeal, the First Department, in affirming the decision of the lower court, found that “as the agency having both policy-making authority and functional responsibility for civil service matters in New York City, DCAS has the power to investigate and determine the qualifications of applicants for civil service positions. In this instance, DCAS has delegated its powers ... to the Police Department, thus giving it the authority to disqualify respondent from employment. In determining the fitness of candidates, the Police Department, as the agency charged with the responsibility, is afforded wide discretion, which is to be sustained unless clearly abused. On the other hand, the [CCSC] is not empowered to decide the matter de novo, the only powers reserved to it being those of an appeals board to hearing and decide appeals by persons aggrieved by DCAS’s determination its standard of review is the same as the judicial

standard applicable in article 78 proceedings ... thus limited to whether there was a rational basis to support the Police Department's determination that respondent was not qualified for reinstatement as a police officer." *Matter of Ciacciullo*, 20 A.D.3d at 348.

In the instant action, CCSC's determination was made in violation of lawful procedure. *Ciacciullo* directly applies to the instant action in that the facts in *Ciacciullo* mirror the facts of the instant action. As in *Ciacciullo*, Amato was disqualified from his candidacy as a police officer on psychological grounds by NYPD – which under authority delegated to it by DCAS had the authority to disqualify Amato from employment. Also as in *Ciacciullo*, CCSC conducted a *de novo* hearing and reversed the determination of NYPD. In doing so, CCSC overstepped its authority in that at the appeals hearing held on July 27, 2010, CCSC accepted evidence that was not considered by NYPD in making its determination to disqualify Amato by considering the additional testimonial evidence of Amato and Dr. Lerner which was presented for the first time at the hearing. This type of review is outside the scope of CCSC's jurisdiction as CCSC's jurisdiction is limited to that of an appeals board and its consideration should have been limited to whether there was a rational basis to support NYPD's determination that Amato was not qualified for police officer candidacy based only on the evidence available to NYPD at the time of its review.

In addition to finding that CCSC overstepped its authority by conducting a *de novo* review, the court also finds that NYPD had a rational basis to disqualify Amato's candidacy. NYPD based its decision to disqualify Amato on the psychological evaluation of its own psychologist as well as the records generated by the VA in connection with its decision to award Amato with disability benefits from PTSD. NYPD relied on Amato's self-reported symptoms of

problems sleeping, nightmares, anxiousness, being tense, startling easily, being hypervigilant, experiencing intrusive memories, depression and forgetfulness as well as the opinion of Dr. Rhoads who determined that Amato's psychiatric symptoms were "mild or transient but cause occupational or social impairment with decrease in work efficiency and occupational tasks only during periods of significant stress." As it cannot be said as a matter of law that there was no rational basis for NYPD's finding that respondent is psychologically unsuitable for the police officer position, the determination of CCSC to reinstate Amato was arbitrary and capricious.

Finally, to the extent that respondents are arguing that they were entitled to a *de novo* CCSC hearing because NYPD violated section § 50 of the Civil Service Law in that Amato was disqualified without "[having] been given a written statement of the reasons therefor and afforded an opportunity to make an explanation and to submit facts in opposition to such disqualification," that argument is without merit. Respondents argue that the CCSC appeal was the first and only opportunity for Amato to make an explanation and submit facts in opposition to NYPD's determination. However, NYPD sent Amato a letter with an explanation for its decision and instructions for appealing its decision and NYPD did in fact receive evidence from Amato. It received Dr. Lerner's evaluation and conducted another review of its initial decision to disqualify Amato after considering this evaluation. Only after considering the evaluation did NYPD sustain its initial determination.

Accordingly, the court grants petitioners' petition seeking an order reversing the July 30, 2010 decision of CCSC and reinstates the determination of NYPD disqualifying Amato from becoming a New York City police officer on psychological grounds.

