

Case Notes

Remand was required where record did not disclose basis for agency's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Process servers have no statutory right to tenure (citing former N.J.A.C. 4:1-8.14). *New Jersey District Court Assoc., Inc., v. New Jersey Superior Court*, 205 N.J.Super. 582, 501 A.2d 596 (App.Div. 1985) affirmed 208 N.J.Super. 527, 506 A.2d 742 (1986), certification denied 104 N.J. 386, 517 A.2d 393, certiorari denied 107 S.Ct. 1289, 479 U.S. 1086, 94 L.Ed.2d 146.

Absent contractual, statutory or implied right to continued employment, employment termination invokes no substantive due process protection of a property interest (citing former rule N.J.A.C. 4:1-8.14). *N.J. District Court Associates, Inc., v. N.J. Superior Court*, 205 N.J.Super. 582, 501 A.2d 596 (Law Div. 1985) affirmed 209 N.J.Super. 527, 506 A.2d 742 (App.Div. 1986), certification denied 104 N.J. 386, 517 A.2d 393, certiorari denied 107 S.Ct. 1289, 479 U.S. 1086, 94 L.Ed.2d 146.

Interest in liberty protected by due process clause; right to post-termination evidentiary hearing (citing former N.J.A.C. 4:1-8.14). *Campbell v. Atlantic Cty. Bd. of Freeholders*, 145 N.J.Super. 316, 367 A.2d 912 (Law Div. 1976) affirmed per curiam 158 N.J.Super. 14, 385 A.2d 311 (App.Div. 1978).

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-6.4). *Valluzzi v. Bergen County*, 10 N.J.A.R. 89 (1988), adopted—*Merit System Bd., App.Div. A-3269-87, 3/3/88*.

Discretion of Bd. of Trustees to refund contributions to pension fund after employee was dismissed for delinquent performance of his duties. Refund granted (citing former N.J.A.C. 4:1-8.14). *Maddox v. Bd. of Trustees*, 2 N.J.A.R. 372 (1980).

4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items, scoring and administration (see N.J.A.C. 4A:4-6.4);
2. Disqualification for medical or psychological reasons (see N.J.A.C. 4A:4-6.5); and
3. Examination related matters other than (a)1 and (a)2 above (see N.J.A.C. 4A:4-6.6) including:
 - i. Disqualifications under N.J.A.C. 4A:4-6.1;
 - ii. List extension or revival; and
 - iii. Denial of veterans preference.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the Commissioner, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examina-

tion results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a)1: Made stylistic revisions.

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Merit System Board bears burden of establishing job-validity of its psychological tests. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Appointing authority has discretion under "rule of three" statute to appoint any of top three candidates while statute mandating preference for residents in the event of tie scores were pertinent in placing three people on list (citing former N.J.A.C. 4:1-9.6; 4:2-9.1; 4:3-9.1). *Gallagher v. Irvington*, 190 N.J.Super. 394, 463 A.2d 969 (App.Div. 1983).

Claim of failure to promote due to anti-union animus. *City of Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div. 1978). Modified and affirmed 82 N.J. 1, 410 A.2d 1146 (1980).

Jurisdiction, Civil Service Commission and PERC. *City of Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div. 1978) modified 82 N.J. 1, 410 A.2d 1146.

4A:4-6.4 Review of examination items, scoring and administration

(a) Candidates for multiple choice examinations shall be permitted to review the scoring key for a period of five business days beginning on the second business day after the examination has been held.

1. Within the review period set forth in (a) above, candidates may file an appeal against the scoring key and/or examination items.

2. The appeal shall be in writing, specify the question(s) being challenged and must be received by the Department of Personnel by the end of the review period.

3. All questions under appeal shall be reviewed by the Department of Personnel and, when necessary, appropriate action taken to modify the examination scoring.

4. No appeal relating to the scoring key or a multiple choice examination shall be permitted after the review period.

(b) Candidates for tests other than multiple choice may review their examination papers and the scoring key and may file an appeal in writing of examination items and scoring 20 days after the Department of Personnel provides notification of examination results. Candidates for multiple choice examinations may review their examination papers and the scoring key during this 20 day period, but may file appeals during this period only with respect to the scoring of

their test papers. See (a) above for multiple choice scoring key and/or examination item appeals.

(c) An examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing for a period of five business days beginning on the second business day after the examination has been held.

(d) Candidates shall not be permitted to copy any of the questions and answers, but shall be allowed to make such limited notes as the Department of Personnel permits.

(e) In order to maintain the security of the examination process, the Commissioner may, on a particular examination, modify or eliminate the review of examination questions and answers.

(f) The appropriate section of the Department to which the appeal is assigned shall review the appeal and render a written decision and include notification of a right of appeal to the Merit System Board.

(g) A party may appeal the first level decision to the Board within 20 days of its receipt.

1. The appeal shall contain all information which was presented to the first level, plus a copy of the decision below and shall be forwarded to the Merit System Board, CN 312, Trenton, New Jersey 08625.

2. The Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

(h) The Board may bypass any other level of appeal for its direct review.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

Added "administration" to section title.

Added new (c) and relettered old (c)-(h) as (d)-(i) with no change in text.

Amended by R.1993 d.162, effective April 5, 1993.

See: 24 N.J.R. 4467(a), 25 N.J.R. 1511(b).

Revised (f); deleted existing (g); redesignated existing (h)-(i) to (g)-(h) and revised text.

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Department of personnel did not sufficiently disclose basis for its grading decision on police sergeant's civil service examination to satisfy due process or to provide for meaningful appellate review. *Brady v. Department of Personnel*, 289 N.J.Super. 557, 674 A.2d 616 (A.D. 1996).

Finding that police officer candidate was mentally unfit to perform police duties was based on substantial evidence. *Matter of Vey*, 272 N.J.Super. 199, 639 A.2d 724 (A.D.1993), certification granted 133 N.J. 445, 627 A.2d 1149, affirmed 135 N.J. 306, 639 A.2d 718.

Police officer candidate was mentally unfit to effectively perform police duties. *Matter of Vey*, 272 N.J.Super. 199, 639 A.2d 724 (A.D.1993), certification granted 133 N.J. 445, 627 A.2d 1149, affirmed 135 N.J. 306, 639 A.2d 718.

Challenge to value of Minnesota Multiphasic Personality Inventory (MMPI) test in determining mental fitness of applicant for police work. *Matter of Vey*, 135 N.J. 306, 639 A.2d 718 (1994).

It was not arbitrary, capricious or unreasonable to find applicant unfit for police work. *Matter of Vey*, 135 N.J. 306, 639 A.2d 718 (1994).

Police department not required to test all of its current police officers and compare those psychological test results. *Matter of Vey*, 135 N.J. 306, 639 A.2d 718 (1994).

Correction officer failed medical exam for the police academy and termination was warranted. *Theodore v. Passaic County Sheriff's Department*, 92 N.J.A.R.2d (CSV) 398.

Removal from eligible list; vision below minimum standard. *Thomas v. State Department of Corrections*, 92 N.J.A.R.2d (CSV) 218.

Position of correction officer; visual acuity standard; medically fit for the position. *Garland v. Department of Corrections*, 92 N.J.A.R.2d (CSV) 140.

Restoration to eligibility list; appointing authority rescinded charge of psychological unfitness. N.J.S.A. 4A:4-65. *Ruth v. Department of Personnel and Borough of Keyport*, 92 N.J.A.R.2d (CSV) 78.

Police captain restored to eligibility list for chief of police. *Ruth v. Department of Personnel and Borough of Keyport*, 92 N.J.A.R.2d (CSV) 78.

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish to the Department of Personnel a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a physician, psychologist or psychiatrist who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series.

2. The appointing authority submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (f) below for report requirements.

3. All medical, psychiatric, and psychological examinations performed at the appointing authority's request shall be at the appointing authority's expense.

(b) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., an appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment, and may condition the offer of employment on the results of such examinations, if:

1. All eligibles for the title, to whom an offer of employment is made, are subjected to such examinations;