

PERSONNEL SERVICES BULLETINS (PSBs)

100-10

Subject: Appeals from medical and psychological disqualifications

Sources: New York State Civil Service Law section 50(4)(b); New York City Charter sections 813(d), 814(a)(6), 815(a)(5), and 815(a)(18); Section 2-02 of the Rules of the New York City Civil Service Commission (also known as 60 Rules of the City of New York §2-02)

Date: April 17, 2000

I. Background

The NYS Civil Service Law ([footnote 1](#)) and the New York City Charter authorize the Commissioner of the Department of Citywide Administrative Services to disqualify a candidate from permanent appointment to a competitive position for a variety of reasons, including the failure to meet medical and psychological standards. The candidate, in turn, has the right to appeal the disqualification to the New York City Civil Service Commission. ([footnote 2](#)).

II. Policy

It is the policy of the Commissioner of the Department of Citywide Administrative Services to monitor a process that ensures that the City will be able to defend before the NYC Civil Service Commission any properly made decision to disqualify a candidate for failure to meet a medical or psychological standard.

III. Procedure

A. Applicability

The policy and procedures contained in this Personnel Services Bulletin shall apply to appeals of medical and psychological disqualifications in the appointment process of candidates for permanent appointment to competitive positions.

B. Authority

Section 814(a)(6) of the New York City Charter ("the Charter") provides that the Commissioner of the Department of Citywide Administrative Services ("DCAS") shall investigate applicants for positions in the civil service and shall review their qualifications. Section 813(d) of the Charter provides that the City Civil Service Commission ("CCSC") shall have the power to hear and determine appeals by a person aggrieved by the Commissioner's decision to disqualify such a person.

Section 815(a)(5) of the Charter provides that agency heads shall assist DCAS in reviewing and evaluating a candidate's qualifications, and, further, section 815(a)(18) specifically permits the delegation by the Commissioner of DCAS of certain personnel management functions to agency heads.

Accordingly, certain functions in the appeal process, detailed in this Personnel Services Bulletin, are hereby so delegated to the Hiring Agencies.

Notwithstanding this delegation, however, the Commissioner of DCAS retains the right, in his or her discretion and with adequate notice to the Hiring Agency, to administer any aspect of the appeal process.

C. Responsibility for Medical Examinations in the Appointment Process

As shall be noted in this PSB, there are different ways a Hiring Agency may conduct medical examinations for its candidates in the appointment process. For example, a Hiring Agency may use the services of its own medical division. It may contract with an outside medical consultant. It may enter into an agreement with

another agency better equipped to conduct medical examinations in the appointment process. Regardless of the manner chosen, however, **it is the responsibility of the Hiring Agency to ensure that the processes outlined in this PSB are followed with regard to candidates for positions in its agency.**

Accordingly, although a Hiring Agency may make arrangements for a particular aspect of the medical examination process to be undertaken outside its agency, it remains the responsibility of that Hiring Agency to ensure compliance.

Example No. 1: Pursuant to this PSB, certain statistics must be maintained on appeals of disqualifications. Notwithstanding the fact that a Hiring Agency may have arranged with another agency or outside consultant to conduct medical examinations and to maintain records regarding those examinations, DCAS will only deal with the Hiring Agency regarding those statistics.

Example No. 2: Pursuant to this PSB, the CCSC will correspond directly with Hiring Agencies when first receiving an appeal from a candidate and when receiving any new medical documentation. Notwithstanding the fact that a Hiring Agency may have arranged with another agency to perform medical examinations, the CCSC will, nevertheless, correspond only with the Hiring Agency regarding its candidates. It will, therefore, be the responsibility of the Hiring Agency to correspond with the agency with which it has made arrangements to perform medical examinations.

D. Initial Filing of an Appeal

1. The CCSC will forward appeals and/or any documentation submitted in support of an appeal of medical and psychological disqualifications to the office within each Hiring Agency identified for such purpose.
2. Each Hiring Agency will identify for the CCSC and the Section 50(4)(b) Assistance Unit the office within the Hiring Agency to which appeals of medical and/or psychological disqualifications should be forwarded.

E. Hiring Agency Actions upon Receipt of any Appeal

1. Upon receipt of a medical and/or psychological appeal of a candidate from the CCSC, the Hiring Agency shall first ascertain that the appeal was filed by the candidate in a timely fashion; that is, that the appeal to the CCSC was made within thirty days of the date of the action or determination appealed from, as provided by Title 60, Section 2-02(a) of the Rules of the City of New York (referred to hereinafter as "the Rules of the CCSC").
2. In the event that the Hiring Agency determines that the appeal of the candidate was not filed with the CCSC in a timely fashion, it shall submit to the CCSC a memorandum stating that the appeal was not filed in a timely fashion and requesting that the appeal be dismissed on that basis. Attached to such memorandum will be the appropriate records maintained by the Hiring Agency which establish that a Notice of Disqualification was mailed to the candidate and the date upon which the Notice of Disqualification was mailed.

Note: A failure to maintain accurate records regarding the mailing of Notices of Disqualification may result in an inability to sustain a request to the CCSC to dismiss a case as untimely. Hiring Agencies are, therefore, encouraged to maintain such records.

F. Hiring Agency Actions upon Receipt of a Medical (as opposed to a

Psychological) Appeal

1. Upon receipt of a timely appeal from a medical disqualification, the Hiring Agency shall, prior to preparing any submission to the CCSC to support the disqualification, afford the disqualified candidate sixty days in which to submit medical documentation to support the appeal, as provided by §2-02(f) of the Rules of the CCSC. The Rules of the CCSC direct that this documentation be submitted to the CCSC. Consequently, allow a reasonable period of time for the CCSC to forward such documentation to the Hiring Agency.
2. In the event that, together with a timely appeal from a medical disqualification, a candidate submits a duly executed authorization form directing that the Hiring Agency release all records supporting a medical disqualification to a health professional of the candidate's own choosing, the Hiring Agency shall comply with said direction as soon as reasonably possible.

G. Hiring Agency Actions upon Receipt of a Psychological (as opposed to a Medical) Appeal

1. Upon receipt of a timely appeal from a psychological disqualification, the Hiring Agency shall, prior to preparing any submission to the CCSC to support the disqualification, afford the disqualified candidate sixty days in which to submit medical documentation to support the appeal, as provided by §2-02(g) of the Rules of the CCSC. The Rules of the CCSC direct that this documentation be submitted to the CCSC. Consequently, allow a reasonable period of time for the CCSC to forward such documentation to the Hiring Agency.
2. In the event that, together with a timely appeal from a psychological disqualification, a candidate submits a duly executed authorization form directing that the Hiring Agency release all records supporting a psychological disqualification to a mental health professional of the candidate's own choosing, the Hiring Agency shall comply with said direction as soon as reasonably possible.
3. In the event that a candidate does not submit medical documentation to support an appeal from a psychological disqualification (within sixty days from the date of the disqualification), the Hiring Agency shall submit a memorandum to the CCSC stating that the candidate did not comply with the rules of the CCSC and requesting that the appeal be **dismissed**.

H. Consideration of New Materials

1. In the event that a candidate submits medical and/or psychological documentation to support his or her appeal, the CCSC will forward any such new documentation to the office within each Hiring Agency identified for such purpose. See, *Sec. III(D)(1)*.
2. The Hiring Agency shall review and give due consideration to such documentation.

Note: The review and consideration which a Hiring Agency shall give such new documentation shall be commensurate with the weight of the new documentation. For example, brief, vague doctors' notes do not necessarily need to receive the kind of review and consideration which documentation prepared after extensive medical examinations would receive.

Note: In those cases where a Hiring Agency has made arrangements with another agency or an outside medical consultant to conduct its

medical examinations, such arrangements should include an agreement to review such new documentation. Failure to anticipate this need when making arrangements or agreements will almost certainly result in confusion in the appeals process.

3. Such review and consideration may include, among other things, scrutiny of the documentation by a doctor of the Hiring Agency or an independent consultant, or a re-examination of the candidate.

Note: Although the rules of CCSC do not actually require that a candidate who has supplied his or her own documentation be examined by a third "independent" medical professional, the CCSC has strongly suggested, in cases where the competing medical documentation is of comparable quality, that such a third "independent" opinion might be what is needed to decide such appeals. **This is particularly true in the case of psychological disqualifications, where the CCSC has made clear its desire to receive a report from third, independent mental health professional in order to assist the CCSC in rendering a decision.**

4. In the event that the new medical documentation prompts a Hiring Agency to rescind its medical disqualification of the candidate, the Hiring Agency shall comply with guidelines regarding the rescission of disqualifications. Notice that the Hiring Agency has rescinded its medical disqualification must be sent to, at a minimum, the candidate, the Certification Unit of DCAS, the Investigation Unit of DCAS, and the CCSC.

I. Submission to the New York City Civil Service Commission

1. In those cases where a Hiring Agency has decided not to rescind a disqualification, it shall be the responsibility of the Hiring Agency to submit to the CCSC a cover report explaining its decision to disqualify a candidate.

2. The cover report shall contain, at a minimum, the following:

- a. reference to the specific medical or psychological standard not met by the candidate;
- b. an explanation as to how this candidate did not meet this standard;
- c. how failure to meet this standard prevents the candidate from performing an essential function(s) of the position; and
- d. reference to any documentation supplied by the candidate, with an explanation as to why this documentation does not serve as a basis to rescind the disqualification.

3. Attached to, or enclosed with, the cover report shall be copies of any and all medical or psychological records which support the disqualification. These records shall be clearly identified as records in support of the disqualification.

4. Attached to, or enclosed with, the cover report shall be copies of any and all medical or psychological records submitted by the candidate in support of his or her contention that he or she is qualified for the position. These records shall be clearly identified as records in support of the candidate's appeal.

Note: In preparing its cover report, a Hiring Agency

may consider using exhibit tabs to clearly identify and distinguish the documentation submitted in support of the disqualification and the candidate's documentation in support of his or her appeal.

5. A copy of the cover report with all attachments shall be mailed by first-class mail to the candidate.

Note: If the Hiring Agency is aware that the candidate is represented by counsel in the appeal of the disqualification, a copy of the cover report shall be mailed by first-class mail to the attorney, and not the candidate.

6. It should be the goal of the Hiring Agency to submit a cover report as soon as reasonably possible after all materials have been received and considered.

Important Note: Because the mechanism known as the "Special List" is no longer available, it is essential that any cover report seeking to have a disqualification upheld by the CCSC be submitted to the CCSC prior to the expiration of the candidate's eligible list. Where possible, the cover report should be submitted so that the CCSC may have a reasonable amount of time to consider the material and, in the event that a disqualification is reversed, the candidate will have a realistic opportunity to be considered for appointment.

J. Hearing before the New York City Civil Service Commission

1. The CCSC will forward the notice of an evidentiary hearing (if the CCSC determines that a hearing is, in fact, needed) to both the Hiring Agency and the Office Manager of the Office of the General Counsel of DCAS named to receive such a notice.

2. The Office of the General Counsel of DCAS shall represent the City at the evidentiary hearing before the CCSC.

3. The Hiring Agency shall forward to the Office of the General Counsel of DCAS, as soon as reasonably possible after a notice of hearing has been issued, all materials maintained with regard to the appeal of this disqualification, including the medical or psychological file and the cover report submitted to the CCSC by the Hiring Agency.

4. It shall be the responsibility of the Hiring Agency to assist the Office of the General Counsel of DCAS by providing any witnesses required for an evidentiary hearing. For example, this responsibility extends to the payment of any fees to consultants.

K. Statistics

1. It shall be the responsibility of the Hiring Agency to maintain such statistics as DCAS may require to ensure that the processes outlined in this PSB are being followed. It shall be the responsibility of each Hiring Agency to maintain the following statistics:

a. the number of appeals forwarded to the Hiring Agency by the CCSC;

b. the date upon which the appeals were submitted to the CCSC, as reflected on the CCSC's

"Acknowledgment of Receipt of Notice of Appeal";

c. the date upon which cover reports were submitted to the CCSC.

William J. Diamond
Commissioner

Footnote 1: Because it is New York State Civil Service Law **Section 50(4) (b)** which provides the basis for medical standards, examination, disqualifications, and appeals in the appointment process, the unit within DCAS which shall be entrusted with assisting agencies in dealing with these issues has been named the **Section 50(4) (b) Assistance Unit**.

Footnote 2: This PSB provides guidance on one process resulting from Civil Service Law section 50(4) (b); that is, the appeal process. Separate PSB's on the other three processes (that is, promulgation of medical and psychological standards, medical and psychological examinations, and medical and psychological disqualifications) shall be forthcoming.

Inquiries: Office of the General Counsel (212) 669-8400

Issue No. 7-2000