

PERSONNEL SERVICES BULLETIN

100-10R
PSB No.

Subject: Medical and Psychological Disqualifications

Supersedes: Personnel Services Bulletin No. 100-10

Source: New York State Civil Service Law Section 50(4); 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: March 22, 2013

I. Background

The Civil Service Law and the New York City Charter authorize the Commissioner of the Department of Citywide Administrative Services (DCAS) to disqualify a candidate from permanent appointment to a competitive position for a variety of reasons, including medical and psychological grounds. The candidate, in turn, has the right to appeal such disqualification to the New York City Civil Service Commission (CCSC).

II. Policy

It is the policy of the DCAS Commissioner to monitor a process that ensures that DCAS and the hiring agencies will be able to defend before the CCSC any properly made decision to disqualify a candidate on medical or psychological grounds.

III. Procedure

A. Applicability

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

B. Authority

Section 814(a)(6) of the New York City Charter (Charter) provides that the DCAS Commissioner shall investigate applicants for positions in the civil service and shall review their qualifications.

Section 813(d) of the Charter provides that the 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 DCAS Commissioner of certain personnel management functions to agency heads.

Accordingly, certain functions in the application and appeal process, detailed in this PSB, are hereby so delegated to the hiring agencies.

Notwithstanding this delegation, however, the DCAS Commissioner 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 in the Appointment Process

There are different ways a hiring agency may conduct medical or psychological 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 consultant or it may enter into an agreement with another agency better equipped to conduct examinations. Regardless, **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.**

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 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 a notice of appeal from a candidate and when receiving any new documentation. Notwithstanding the fact that a hiring agency may have arranged with another agency to perform 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 examinations.

D. Notice of Proposed Disqualification

Upon receipt of the report of a proposed medical or psychological disqualification, the hiring agency will send to the candidate a Notice of Proposed Disqualification providing notice of the proposed disqualification and of the opportunity to submit either a written statement and additional documentation to oppose the disqualification or a letter irrevocably withdrawing from the process for that exam. The notice shall include an authorization form directing that the hiring agency release all records supporting the disqualification to a licensed medical or mental health professional of the candidate's choosing. The candidate shall be instructed that he/she has thirty days to submit one of the following to the hiring agency:

1. a written statement opposing the disqualification with any additional documentation the candidate wishes to submit; or
2. if the candidate wishes to submit a report and supporting documentation from a licensed medical or mental health professional, then the completed, signed and notarized authorization form along with a letter from that designated professional, on letterhead stationery, requesting a copy of the medical or psychological file to be sent directly to the designated professional. The notice shall provide that the designated professional will then have sixty days, upon the hiring agency, or its designee, sending the file, to submit to the hiring agency any report or additional documentation; or
3. should the candidate wish to withdraw, a letter irrevocably withdrawing from the process for that exam.

E. Consideration of New Materials

In the event that a candidate submits documentation to oppose the proposed disqualification, the hiring agency should review and give due consideration to such documentation. Such consideration may include review of the documentation by a doctor or psychologist of the hiring agency or of an outside consultant or a re-examination of the candidate. In those cases where a hiring agency has made arrangements with another agency or an outside consultant to conduct its examinations, such arrangements should include an agreement to review such new documentation.

F. Notice of Disqualification

In the event that no new documentation is submitted or that the new documentation does not prompt the hiring agency to rescind its proposed disqualification, the hiring agency will send to the candidate a Notice of Disqualification that includes notice of the right to appeal the disqualification to the CCSC within thirty days of the date of the notice.

G. Filing of an Appeal

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.

H. 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 was filed within thirty days of the Notice of Disqualification, as provided by Title 60, Section 2-02(a) of the Rules of the City of New York. In the event that the hiring agency determines that the appeal of the candidate was not filed in a timely fashion, it shall submit to the CCSC a memorandum stating that the appeal was not timely filed and requesting that the appeal be dismissed on that basis. Attached to such memorandum should be copies of the appropriate records maintained by the hiring agency which establish that a Notice of Disqualification was mailed to the candidate.

2. In the event that the appeal was timely filed, the hiring agency shall submit to the CCSC a cover report explaining its decision to disqualify the candidate. The cover report should contain the medical or psychological basis for the candidate's disqualification, including why the candidate is unable to perform the essential function(s) of the position, and a response to any new documentation supplied by the candidate. Enclosed with the cover report should be copies of all medical or psychological records, including any records submitted by the candidate in support of his/ her contention that he/ she is qualified for the position. A copy of the cover report *without* the attachments should also be mailed to the candidate, or, if represented by an attorney or if the candidate submitted a report from a licensed medical or mental health professional, then a copy of the report *with* the attachments should be sent to the candidate's attorney or, if no attorney, then to the candidate's medical or mental health professional.
3. It should be the goal of the hiring agency to submit a cover report as soon as reasonably possible and within any prescribed deadline set by the CCSC (with timely requests for extensions made if the hiring agency cannot meet the prescribed deadline), 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.

I. Hearing before the CCSC

1. Upon determination that a hearing is needed, the CCSC will forward the notice of a hearing to both the hiring agency office designated to receive such a notice and the Office of the General Counsel of DCAS.
2. The Office of the General Counsel of DCAS shall represent the hiring agency at the hearing before the CCSC, unless the hiring agency is designated to represent itself at the hearing.
3. The hiring agency, unless designated to represent itself, 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. This responsibility extends to the payment of any fees to consultants.

J. Reversals

In the event that the CCSC reverses the disqualification without a hearing and the hiring agency does not appeal (or, after appealing, the CCSC's decision is affirmed), the hiring agency shall notify the Certification Unit of DCAS that the disqualification has been reversed. In the event that the CCSC reverses after a hearing (and no appeal is pursued, or, after appealing, the CCSC's decision is affirmed), DCAS or, if it has been designated to represent itself at the hearing, the hiring agency will notify the Certification Unit.

K. Statistics

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:

1. The number of appeals forwarded to the hiring agency by the CCSC;
2. The date upon which the appeals were submitted to the CCSC, as reflected on the CCSC's "Acknowledgment of Receipt of Notice of Appeal"; and
3. The date upon which cover reports were submitted to the CCSC.

Edna Wells Handy
Commissioner