

APPEALING A NEW YORK CIVIL SERVICE JOB DISQUALIFICATION

UNDERSTANDING NEW YORK
CIVIL SERVICE APPEALS 



KEVIN P. SHEERIN

www.sheerinlaw.com

APPEALING A NEW YORK CIVIL SERVICE JOB DISQUALIFICATION

UNDERSTANDING NEW YORK CIVIL SERVICE APPEALS

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CREATED BY READING THIS MATERIAL. IF YOU HAVE A

CASE AS DISCUSSED HER SEEK PROFESSIONAL LEGAL

COUNSEL TO GET YOUR QUESTIONS ANSWERED.

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About the Author - Kevin P. Sheerin

BIOGRAPHY

ADMITTED TO PRACTICE

New York State 1994

United States District Court Eastern and Southern Districts

EDUCATION

Cathedral College B.A. Philosophy 1979

St. John's University School of Law, J.D. 1993

EXPERIENCE

Retired Captain NYPD 2001

Commanding Officer Queens South Investigations Unit Housing Bureau
Investigations Unit

Member NYPD Legal Bureau

Police Academy Instructor

AFFILIATIONS

New York State Trial Lawyers Association

Nassau County Bar Association

I opened my law office in 2003 and have been assisting candidates who have been disqualified from civil service jobs since then. I have represented disqualified candidates from the NYPD, FDNY, NYC DOC, NYC Dept of Sanitation, New York State Courts, New York State Department of Corrections, New York City Engineers, Oilers, Painters, Plasterers and other Department of Citywide Administrative Services (DCAS) titles.

Chapter One

Title: NOTICE OF PROPOSED DISQUALIFICATION

After your Civil Service Job application written examination background investigation, psychological testing, medical examination, you may received an email or a letter in the mail by USPS titled:

“NOTICE OF PROPOSED DISQUALIFICATION”

1. Pursuant to New York state civil service law section 50 subdivision 4 hiring agencies must give you an opportunity to explain yourself when they intend to disqualify you – This is an NOPD. You usually have thirty (30) days to file an Appeal. Sometimes you have only fifteen (15) days – Read Carefully.

MEDICAL, PSYCHOLOGICAL DISQUALIFICATION

1. File Appeal
2. Designate Expert

CHARACTER DISQUALIFICATION

3. Collect information
4. File Appeal

NOTICE OF DISQUALIFICATION

1. You will receive a letter saying you were disqualified.
2. You have 30 days to appeal.
3. File an Appeal package with County Civil Service Commission.
4. Request Hearing.

CPLR ARTICLE 78

1. Lawsuit filed in NYS Supreme Court.
2. Judge - Disqualification was arbitrary and capricious, irrational.
3. Request Order finding decision to uphold disqualification was irrational.

Chapter Two

Title: OVERVIEW OF NEW YORK CITY APPEALS

Have you taken a civil service exam to become a police officer, fire fighter, corrections officer, sanitation worker or other civil servant for New York City or New York State and received a letter stating you are disqualified – either for medical, psychological or background/character reasons? If so you must first realize that you have only THIRTY days to appeal this decision, so you must act quickly. Your best option is to seek the legal advice of an attorney to properly handle this situation.

In this eBook, we will discuss why people are disqualified and what they can do to appeal a New York City or New York State civil service disqualification.

New York City Civil Service Disqualifications Overview

Types of Disqualifications

There are three main types of disqualifications for civil service jobs – medical, psychological and character.

Medical

Reason: Fail the medical examination.

There are many reasons why candidates can be medically disqualified. Any physical disability that would make performing the duties of the position applied for would be grounds for disqualification. This would include minor problems with hearing or vision as well as more major issues involving the respiratory or cardiovascular systems.

Psychological

Reason: Fail the written or oral psychological examination.

There are two components to the psychological exam – written and oral. You can fail either one of these portions and be disqualified. If you receive a psychological disqualification you will need to seek out a second opinion from another psychologist. This doctor will need to interview you and review the records from the department you applied to and then write a report concerning their professional opinion of your fitness to serve as a civil servant.

Character

You could be disqualified for arrests, poor driving record, problems in school, high school, college, problems at work – terminations and discipline and problems in relationships – disputes or police response to fights. The issues are assessed based on frequency, recently and severity of the incidents. To appeal, you would have to provide persuasive explanations to the incidents to convince the hiring agency or the Civil Service Commission concerned that you have the necessary character for the position you are seeking.

What to Do When you receive a Notice of Disqualification

NOD

First off, you need to remember that you have a limited time (only thirty days) (sometimes less than 30 days) to appeal your disqualification so you need to act fast. Seeking out the aid of a civil service attorney may be your best option since they know the necessary steps for filing an appeal.

To appeal a civil service disqualification you must submit a letter to the Civil Service Commission explaining your intent to appeal as well as any supporting documents and a copy of the disqualification letter. This letter should be sent Certified Mail Return Receipt Requested.

Once the Commission receives the letter, they will mail out an acknowledgment of appeal letter and send the appeal to the appropriate internal division for review and recommendation.

In the case of a medical or psychological disqualification you will need to see a third “independent” medical professional to obtain medical documentation that would support your argument that you are qualified for the job in question. This doctor will review the report written by the original doctor and write their own report with their findings. This report is then sent to the Civil Service Commission for them to review in making their final determination. You have sixty days to submit medical documentation supporting your appeal.

A hearing may be scheduled to allow you to present your appeal. If a hearing is scheduled you will be notified in writing of the date and time. At this hearing you and/or your attorney have the opportunity to present arguments in support of your positions. In the case of a medical disqualification, your doctor could be present to provide further insight into why they believe you are physically able to serve in the civil service position that you are applying for.

After the hearing the Commission will determine whether or not to grant your appeal. The final decision is in written format and a copy is mailed to you and your lawyer. You then have the option of filing an Article 78 appeal if you are not satisfied with the outcome.

Chapter Three

Title: MEDICAL DISQUALIFICATIONS

Examples of Disqualification Cases

The following are examples of civil service exam disqualification appeals that may be similar to the situation you are currently involved in. If you find yourself in a situation similar to one of these cases, please contact a lawyer immediately to discuss the possibility of starting an Article 78 appeal.

Medical Disqualification

Article 78 appeal from NYPD medical disqualification for hearing impairment
Matter of Antonio Cardona v City of New York Civil Service Commission

Petitioner, Antonio Cardona, brought about this Article 78 proceeding to vacate his disqualification for appointment as a Police Officer with the New York City Police Department (NYPD).

Petitioner passed the written portion of the exam and was placed on the eligible list for a position as a police officer but then failed three pure tonal hearing tests and was subsequently disqualified. Petitioner filed an appeal and submitted two medical reports. Both doctors stated that they did not feel that Mr. Cardona's mild hearing loss in his left ear would interfere with his ability to perform the duties of a police officer. The Civil Service Commission reviewed this case and affirmed the NYPD's decision to disqualify Petitioner. Petitioner then filed this Article 78 appeal to review the determination.

Petitioner argued that the pure tonal hearing test administered by the NYPD was not rationally related to the duties of a police officer and that his disqualification violated New York Executive Law § 296, prohibiting discrimination against an applicant based on a disability.

The Court disagreed with Mr. Cardona's first argument and felt that the use of a pure tonal test was related to police officer functions in that it serves to set a hearing standard for applicants. In response to Petitioner's accusations of discrimination, the Court agreed. Since Petitioner did have a disability under Executive Law § 296, the NYPD needed to prove that his hearing loss would

prevent him from performing in a reasonable matter. NYPD would need to conduct an individualized test and since they merely relied on the results of three pure tonal hearing tests, they only proved Petitioner suffered from a hearing disability, not that he was unable to perform the duties of a police officer. Plus the reports from Petitioner's two doctors and seven affidavits from current and retired NYPD officers all stated that he would be an effective Police Officer.

Accordingly, the Supreme Court granted petition and remanded this matter to the New York City Police Department to make an "individualized" determination consistent with Executive Law § 296.

Chapter Four

Title: PSYCHOLOGICAL DISQUALIFICATIONS

Psychological Disqualification.

Nassau County Civil Service Commission must produce written protocol showing why candidate was psychologically disqualified from position of police officer. *Matter of McElligott v Nassau County Civil Service Commission*

Petitioner, Maurice McElligott, brought about this Article 78 proceeding to review the determination of the Nassau County Civil Service Commission psychologically disqualifying him from probationary employment as a police officer. The Supreme Court ruled in favor of petitioner, ordering Nassau County Civil Service Commission to produce the written protocol used to determine passage or non-passage of petitioner's MMPI-2 test. The Commission then appealed this decision.

In 2003, petitioner applied to the Nassau County Civil Service Commission (the Commission) for a position as a Nassau County police officer. He passed the written exam and other tests but was required to schedule an appointment for a psychological interview following his completion of the Minnesota Multiphasic Personality Inventory II (MMPI-2). After completing the psychological interview, petitioner was then directed to make an appointment with a psychiatrist. Petitioner was then informed that he failed to meet the psychological requirements of the position and therefore was psychologically disqualified. Petitioner submitted two independent psychological evaluations and numerous personal recommendations and requested the Commission reconsider his disqualification. The Commission reaffirmed its determination and petitioner commenced this Article 78 appeal finding the disqualification arbitrary and capricious and based upon a subjective reaction to his personality rather than based on any objective criteria.

The Commission explained in its answer that the first stage of the psychological screening process includes a group administration of the MMPI-2. Applicants that fall within the accepted range are not subjected to further psychological testing while applicants with scores outside the normal range must complete an in-person interview with a clinical psychologist. According to his affidavit,

the psychologist who completed petitioner's interview said that contrary to the claims of the Commission, all candidates' MMPI-2 results are reviewed by a psychologist and then interviewed. The Court found the statements by the Commission and the staff psychologist to be in opposition and directed the Commission to produce the actual protocol used to determine whether petitioner's scores were within the normal MMPI-2 range.

The Commission argued that the courts order constituted an attempt to interfere with its discretion to determine the qualifications of police officers. The Court disagrees and feels that the evidence demanded, the written protocol for determining whether a given candidate's MMPI-2 score fell outside of a pre-determined normal range triggering the need for an in-person psychological evaluation, was relevant.

Accordingly, the Court affirmed the decision, without costs or disbursements.

Chapter Five

Title: CHARACTER DISQUALIFICATIONS

Character Disqualification.

Reason: Fail the background check.

On the DCAS website they list the following list concerning factors that may disqualify a candidate from the NYPD:

The following are factors which would ordinarily be cause for disqualification:

- Conviction of an offense which indicates lack of good moral character or disposition towards violence or disorder, or which is punishable by one or more years imprisonment.
- Repeated convictions of an offense which indicate disrespect for the law.
- Discharge from employment as a result of poor behavior or inability to adjust to discipline.
- Dishonorable discharge from the United States Military.
- Conviction of an offense for Domestic Violence Misdemeanors.
- A Felony conviction.
- Statutory Disqualification (disqualified by law)

You could be disqualified for arrests, poor driving record, problems in school, high school, college, problems at work – terminations and discipline and problems in relationships – disputes or police response to fights. The issues are assessed based on frequency, recently and severity of the incidents. To appeal, you would have to provide persuasive explanations to the incidents to convince the hiring agency or the Civil Service Commission concerned that you have the necessary character for the position you are seeking.

Chapter Six

Reprint of the Rules of the Civil Service Commission

Rules of the New York City Civil Service Commission.

The CSC hears and determines three specific types of appeals:

- Candidate Appeals under to Civil Service Law § 50
- Disciplinary Appeals under Civil Service Law § 76
- Involuntary Medical Leave Appeals under Civil Service Law § 72

The CSC is the administrative equivalent of an Appellate Court. The CSC carefully reviews the record and makes a determination which is final and binding, unless appealed to the New York State Supreme Court.

Individuals who qualify for appeal under Sections 50 and 76 of the Civil Service Law have the right to appeal agency decisions rendered against them to the CSC. The CSC only hears Section 72 appeals when designated to do so by the Department of Citywide Administrative Services (DCAS). The CSC is authorized to hold hearings, examine witnesses, and receive evidence similar to a trial-type proceeding

The Civil Service Commission (“CSC”) is an independent, “quasi-judicial” agency authorized under Chapter 35 § 813 of the New York City Charter, to hear and decide Appeals from determinations made under §’s 50 and 76 of the New York State Civil Service Law. Additionally, the CSC will determine appeals under Section 72 of the Civil Service Law, when requested to do so by the Department of Citywide Administrative Services.

The CSC is made up of five Commissioners appointed by the Mayor to six year terms. The Mayor designates one of the Commissioners as Chair and one as Vice Chair on a yearly basis. No more than three of the Commissioners may be affiliated with the same political party.

Mission Statement

The mission of the New York City Civil Service Commission is to provide a fair and efficient forum for the adjudication of appeals and to assure that the

treatment of civil service applicants and employees is consistent with civil service laws and the rules and regulations of the City of New York.

The Civil Service Commission hears and decides appeals by applicants who have been disqualified for appointment to civil service positions.

The Commission also hears and decides appeals by City employees who were disciplined by their employing agency. The Commission may affirm, modify or reverse the decisions that are appealed to it.

Furthermore, the Commission may conduct reviews and studies of the administration of City personnel.

Chapter Seven

Title: FDNY APPEALS

Like N.Y.P.D candidates, for the FDNY, many receive a NOPD (Notice of Proposed Disqualification) from the FDNY pursuant to NYS Civil Service § 50 (4). The disqualifications may be for medical, psychological or character background reasons.

Candidates have 30 days to respond to the NOPD. After an Acknowledgement of Appeal is received, the appellant/candidate has 20 days in the case of a background/character disqualification and 60 days in the case of a psychological disqualification to submit a reply. The 60 days passes from the date the candidates independent expert receives the FDNY's psychological file.

The FDNY can disqualify a candidate for:

Character/Background, psychological issues, medical issues. Candidates have been disqualified for pulmonary deficiencies. My office has been successful in appealing these disqualifications in a number of cases.

Chapter Eight

Reprint of the NYS Disqualification Rules.

Title: OVERVIEW OF NEW YORK STATE DISQUALIFICATIONS

New York State Civil Service Disqualifications

In the instance of a New York State civil service disqualification, the following guidelines are applicable:

Any individual or entity who feels that they have been aggrieved by an action or decision of the President of the Civil Service Commission may file an appeal to the Commission.

The aggrieved party (“appellant”) should submit the appeal with all necessary supporting documents, in writing, according to the deadlines pertaining to the subject of the appeal.

The appeal should include a copy of the final determination letter from the Commission as well as any documents and information supporting appellant’s appeal. If unsure of the statute or time restrictions on the appeal, appellants should file with the Commission within thirty days of receiving the written determination.

After receiving an appeal, the Commission will send out an Acknowledgment of Appeal and process the appeal internally. Once they have received all relevant information, the Commission will notify appellant that the appeal will be presented to the Commission. The Commission generally considers an appeal based on the papers submitted. The appellant may request to appear before the Commission to present their appeal and if the Commission agrees, they will inform appellant, in writing, of the date, time and place of the appeal.

The appellant may appear before the Commission with or without representation. If the appellant chooses to appear with a representative, they will be provided the opportunity to present arguments in support of their positions. The proceedings are informal and formal rules of evidence do not apply. No oaths are administered and individuals are not subject to cross-

examination. If the appellant or their representative fails to appear at the scheduled hearing, the appeal will be determined based on the appellant's written submissions.

After all evidence and arguments have been presented, the Commission will deliberate and determine whether to grant or deny the appeal. All final decisions will be made in writing. The Commission will mail the appellant a copy of the final decision as well as posting it on the Commission's public website.

Chapter Nine

Reprint of the Nassau County Civil Service Rules.

Title: NASSAU COUNTY CIVIL SERVICE COMMISSION APPEAL PROCESS

The Nassau County Civil Service Commission is located at 40 Main Street, 2nd Floor, Hempstead, New York 11550

The Commission also serves as Personnel Department for the County and posts job announcements and Notices of Examination.

There is also a short time frame for Appeals with Nassau County. The time to appeal is within 15 days from the date of the disqualification letter you were sent. The Commission meets every other Tuesday to decide Appeals. As always sent your Appeal document Certified Mail/Return Receipt Requested.

Call our office a call at (888) 998-9984 to make a free consultation appointment to let the Nassau County Civil Service Commission know that you intend to Appeal.

They handle three types of Appeals, Medical, Psychological and Background/Character Disqualifications.

We have had a number of successful Appeals to the Nassau County Civil Service Commission. Some of them include but are not limited to blood pressure disqualifications, medical disqualifications including a recent candidate who had a rod in his femur who was attempting to become a Nassau County Police Officer.

Additionally another individual who had been disqualified for a number of medical reasons won his Appeal. He had suffered from sleep apnea and other medical conditions. After he retained us we put together an Appeal package on his behalf and he was able to prevail and is now a Nassau County Police Officer.

Additionally, a candidate who had been disqualified for psychological reasons, who was a candidate for the Nassau County Sheriff's Department won his Appeal after he submitted an independent psychological evaluation and our office put together a package on his behalf.

In another instance a candidate for Nassau County Police Department with numerous medical issues including but not limited to sleep apnea and heartbeat irregularities. His independent doctors affirmed that he was qualified and he recently had his disqualification reversed.

Therefore, if you were disqualified and have multiple medical conditions, you may wish to Appeal because past successes have indicated that those who persist in their Appeal may succeed after hiring our office and pursuing their Appeal.

Chapter Ten

Title: SUFFOLK COUNTY CIVIL SERVICE APPEALS PROCESS

If you receive a psychological disqualification from the Suffolk County Department of Personnel, you only have a limited time to file your Appeal so you must act promptly. You can request an Appeal and that Appeal would be before a three person Appeal panel in their offices. It is recommended that you get an independent psychological rebuttal report saying that you are qualified to be Suffolk County Police Officer. If the three person Appeals panel denies your Appeal you can file an Article 78 proceeding in Supreme Court, Suffolk County.

Call our office a call at (888) 998-9984 to make a free consultation appointment or visit our website at www.sheerinlaw.com if the Appeal panel rules against you, you will have four months to file an Article 78 Petition in the Suffolk County Supreme Court.

Chapter Eleven

NEW YORK STATE CIVIL SERVICE LAW

§ 50- EXAMINATIONS

§ 50. Examination generally.

1. Positions subject to competitive examinations. The merit and fitness of applicants for positions which are classified in the competitive class shall be ascertained by such examinations as may be prescribed by the state civil service department or the municipal commission having jurisdiction.

2. Announcement of examination. The state civil service department and municipal commissions shall issue an announcement of each competitive examination, setting forth the minimum qualifications required, the subjects of the examination, and such other information as they may deem necessary, and shall advertise such examination in such manner as the nature of the examination may require. Such announcement and advertisement shall each inform prospective applicants of the options for religious observance provided in subdivision eight of this section.

3. Application for examination. The civil service department and municipal commissions shall require prospective applicants to file, during a prescribed time, a formal application in which the applicant shall state such information as may reasonably be required touching upon his background, experience and qualifications for the position sought, and his merit and fitness for the public service. The application shall be subscribed by the applicant and shall contain an affirmation by him that the statements therein are true under the penalties of perjury. Blank forms for such application shall be furnished by said department and such municipal commissions without charge to all persons requesting the same. The department and such municipal commissions may require in connection with such application such certificates of citizens, physicians, public officers or others having knowledge of the applicant, as the good of the service may require.

4. Disqualification of applicants or eligible. The state civil service department and municipal commissions may refuse to examine an applicant, or after examination to certify an eligible

(a) who is found to lack any of the established requirements for admission to

- the examination or for appointment to the position for which he applies; or
- (b) who is found to have a disability which renders him or her unfit to perform in a reasonable manner the duties of the position in which he or she seeks employment, or which may reasonably be expected to render him or her unfit to continue to perform in a reasonable manner the duties of such position; or
 - (d) who has been guilty of a crime; or
 - (e) who has been dismissed from a permanent position in the public service upon stated written charges of incompetency or misconduct, after an opportunity to answer such charges in writing, or who has resigned from, or whose service has otherwise been terminated in, a permanent or temporary position in the public service, where it is found after appropriate investigation or inquiry that such resignation or termination resulted from his incompetency or misconduct, provided, that in cases of dismissal, resignation or termination after written charges of incompetency, the examination or certification in question be for a position that requires the performance of a duty or duties which are the same as or similar to the duty or duties of the position from which the applicant has been dismissed, resigned or terminated on account of incompetency; or
 - (f) who has intentionally made a false statement of any material fact in his application; or
 - (g) who has practiced, or attempted to practice, any deception or fraud in his application, in his examination, or in securing his eligibility or appointment; or
 - (h) who has been dismissed from private employments because of habitually poor performance.

No person shall be disqualified pursuant to this subdivision unless he has 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.

Notwithstanding the provisions of this subdivision or any other law, the state civil service department or appropriate municipal commission may investigate the qualifications and background of an eligible after he has been appointed from the list, and upon finding facts which if known prior to appointment, would have warranted his disqualification, or upon a finding of illegality, irregularity or fraud of a substantial nature in his application, examination or appointment, may revoke such eligible's certification and appointment and direct that his employment be terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made, except in the case of fraud.

§50 Candidate Appeals – Civil Service Commission

Frequently asked questions about the NYC Civil Service Commission from their website.

How long do I have to file an appeal with the CSC?

The CSC must receive your appeal within 30 days of the date on the notice of disqualification. If you file your appeal after 30 days, you must submit an explanation for the delay with your appeal.

How do I file an appeal?

If you received a disqualification letter, that letter should provide instructions for filing an appeal with the CSC. For additional information, please visit the Filing an Appeal section.

What documentation should I submit to support my appeal?

The CSC requires that Appellants submit the notice of disqualification sent to them by the DCAS Commissioner or other examining agency when filing an appeal. The CSC cannot advise Appellants regarding how to pursue their appeals, or what documentation is necessary to submit in support of appeals before the CSC.

Please note that medical and psychological disqualifications are governed by the Personnel Services Bulletin issued on March 22, 2013, a copy of which is located here.

I've already filed an appeal, but need more time to submit documents. Can I get an extension?

If you need more time to submit documents, you may email the CSC at appeals@nyccsc.nyc.gov. Your request must explain why you need an extension, and indicate how much time you think you will need. The CSC will decide whether to grant the extension, and send a notification to you and to

the agency.

What is the status of my appeal?

For information regarding individual appeals already filed with the CSC, please email the CSC at appeals@nyccsc.nyc.gov. Please note that information will only be given to the appellant or authorized representative.

What happens at a CSC hearing? How should I prepare?

The CSC calls a hearing when it has questions about the written record. If you receive a notice of hearing, it will include detailed instructions about the hearing. In appeals involving more complex issues of law, the CSC recommends that appellants consider obtaining the services of an attorney to represent them at the hearing. In addition, the CSC will accept the testimony of a licensed mental health professional, or other appropriate witnesses.

At the hearing, the parties and their witnesses will be sworn in before giving testimony. Both parties will have an opportunity to answer questions asked of them by the Commissioners and to ask and answer questions posed by the opposing party.

When will I receive the CSC's decision on my appeal?

Decisions are issued as soon as practicable after the CSC has reviewed the record and all submissions on the matter. In cases where a hearing was held, decisions are generally mailed out within 90 days of the date of the hearing. Please note that, where there is additional time granted to the parties for post-hearing submissions, the decision will be mailed out within 90 days of the last date of such submissions, where practicable.

When are exams scheduled?

The CSC does not schedule civil service examinations. The civil service exam schedule is managed by the Department of Citywide Administrative Services. The current schedule is located [here](#).

When does the list for my exam expire?

The CSC does not maintain exam lists, and test takers should refer to the instructions for contacting DCAS, located here.

From the New York City Civil Service Commission Website

Who can appeal?

Under section 813(d) of the New York City Charter, the CSC is authorized to decide appeals by certain persons disqualified by the Commissioner of Department of Citywide Administrative Services (DCAS) or other examining agency from eligible lists for civil service positions following competitive civil service examinations.

The DCAS Commissioner or other examining agency may lawfully disqualify candidates:

1. who lack any of the established requirements for admission to the examination, or for appointment to the position in which he/she applies; or
2. who have a disability rendering him/her unfit to perform in a reasonable manner the duties of the position in which he/she seeks employment; or
3. who have been found guilty of a crime; or
4. who have been dismissed, terminated, or have resigned from a position in the public service as the result of his/her incompetence or misconduct;
5. who have intentionally made a false statement or any material fact in his/her application;
6. who have practiced, or attempted to practice, any deception or fraud in his/her application, examination, or in securing eligibility or appointment;
7. who have been dismissed from private employment because of habitually poor performance.

Who may not appeal?

Individuals who have been deemed disqualified for a civil service position not requiring an applicant to take a civil service exam may not appeal that determination to the CSC.

How do I appeal?

Any individual who believes he/she has been improperly disqualified by the DCAS Commissioner or other examining agency for any of the enumerated reasons and qualifies for appeal can appeal that disqualification to the CSC in writing within thirty (30) days of the date the disqualification was issued.

How are appeals decided?

The CSC decides section 50 candidate appeals on the basis of written submissions by the parties. This includes the record used by the DCAS Commissioner or other examining agency in determining the disqualification of the individual.

The CSC, at its own discretion, may choose to schedule an evidentiary hearing to allow the appellant an opportunity to make an explanation and submit facts in opposition to the determination of the DCAS Commissioner or other examining agency. At such proceedings, the DCAS Commissioner or other examining agency head will be permitted to defend his/her determination.

Should the CSC schedule an evidentiary hearing, it will notify the appellant by mail. Although not required, the CSC recommends that appellants obtain the services of an attorney to represent them at the hearing. Appeals often involve complicated issues of law that are more easily addressed by an experienced attorney.

The CSC, after carefully reviewing the record and arguments presented on appeal, issues a written decision as soon as practicable and notifies the parties by mail. In its decision, the CSC may affirm, modify, reverse or remand the determination being appealed.

ADJOURNMENTS

Adjournments will be granted only for good cause shown.

Adjournments should be requested as soon as the reasons for the

adjournment are known or should have been know to the party requesting the adjournment. Delay is requesting an adjournment may be grounds for denial of the request. Adjournment requests should be made no later than ten days before the scheduled hearing date.

It is incumbent upon the party requesting an adjournment to first contact the other party or opposing counsel to inform him/her of the request for an adjournment. If the opposing party is self-represented, you must first contact the Civil Service Commission and the Commission will attempt to contact the self-represented party.

Requests for adjournment should be made to Commission staff by calling 212-615-8915. After speaking with authorized Commission staff, the party requesting the adjournment must also submit the reasons for the adjournment request in writing and send a copy to all other parties.

FROM THE NEW YORK CITY WEBSITE

Rules and Procedures for Medical and Psychological Disqualifications.

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.

§ Section 2-02: Appeals from Determinations of the City Personnel Director.

Codified Rules: Closed to Comments

Title 60: Civil Service Commission

Chapter 2: Determinations of the New York City Civil Service Commission

(a) An appeal to the Commission by any person aggrieved by an action or determination by the City Personnel Director or his or her designee on accordance with his or her powers as specified in §2-02(b) herein, shall be made by application in writing to the Commission within thirty (30) days of the date of the action or determination appealed from. Such action or determination shall be deemed to be effective upon notice to the appellant. If notice of the action or determination is by mail, there shall be a rebuttable presumption that notice occurred as of five calendar days after the date of the mailing of the action or determination.

(b) An appeal to the Commission shall lie only where the action or determination appealed from is made pursuant to the City Personnel Director's powers and duties as enumerated in paragraphs 3, 4, 5, 6, 7, and 8 of §813(a) of the City Charter and paragraph 5 of §813(b) of the City Charter.

(c) The Commission may affirm, modify, reverse or remand such action or determination.

(d) The Commission shall decide appeals from determinations of the City Personnel Director or his or her designee on the basis of written submissions by the parties. Such submissions shall include the record support in the determination of the City Personnel Director or appropriate motions to dismiss the notice of appeal. The Commission, however, may hear oral argument to afford appellant an opportunity to make an explanation and to submit facts in opposition to the action or determination of the City Personnel Director. At such proceedings, the City Personnel Director will be permitted to defend his/her action or determination.

(e) The appellant shall be entitled to a transcript of the Commission's proceedings upon payment of a reasonable cost for the production of same.

(f) All appeals to the Commission which result from medical disqualifications by the City Personnel Director and/or his or her designee pursuant to §813(6) of the City Charter shall be supported by medical documentation which shall be received by the Commission within sixty (60) days of the filing of the appeal.

(g) All appeals to the Commission which result from a psychological disqualification by the City Personnel Director and/or his or her designee pursuant to §813(6) of the City Charter shall be supported by medical documentation which shall be received by the Commission within sixty (60) days of the filing of the appeal.

(h) Extension of the time periods set forth in §§2-02(f) and 2-02(g) may be granted for good cause shown.

(i) When the Commission deems that oral argument is required as set forth in §2-02(d), such proceeding shall be scheduled within ninety (90) days of receipt of the complete record or as soon thereafter as practicable.

(j) The Commission shall in all appeals from actions or determinations of the City Personnel Director render a written determination within ninety (90) days of the date such appeal is reviewed or as soon thereafter as practicable.

(k) The Commission may, in its discretion, take whatever measures it deems appropriate to ensure review of pending appeals prior to the expiration of the pertinent eligible list.

N.Y. NYC. LAW § 813: NY Code - Section 813: City Civil Service Commission

a. There shall be a city civil service commission, consisting of five members, not more than three of whom shall be members of the same political party. Members shall be appointed by the mayor, from a list of nominations provided by the screening committee established pursuant to subdivision b of this section, for overlapping terms of six years. Of the members first appointed, two shall serve for two years and two for four years and one for six years. The members shall be removable in the manner provided for members of a municipal civil service commission in the civil service law. A vacancy in such commission shall be filled in the same manner as regular appointments for the balance of the unexpired term. The mayor shall designate a member as chair and vice chair, respectively, for one-year terms. Within appropriations for such purposes, the members of the commission shall be reimbursed on a per diem basis for attendance at regularly scheduled meetings and hearings of the commission.

b. There shall be a screening committee which shall submit to the mayor a list of nominees, which shall include persons with knowledge or experience of the civil service system, or personnel management, or compensation practices, from which the mayor shall make appointments to the city civil service commission. Such screening committee shall consist of six members, of whom four shall be appointed by the mayor and two shall be appointed by the municipal labor committee. The screening committee shall submit the list of nominees upon the occurrence of any vacancy on the commission or at least three months prior to the expiration of the term of any incumbent member.

c. The commission shall appoint a counsel, who shall not be employed or retained by any other city agency, and may appoint a secretary and such other subordinates as may be necessary within the appropriation therefor.

d. The civil service commission shall have the power to hear and determine appeals by any person aggrieved by any action or determination of the commissioner made pursuant to paragraphs three, four, five, six, seven and eight of subdivision a or paragraph five of subdivision b of section eight hundred fourteen of this chapter and may affirm, modify, or reverse such action or determination. Any such appeal shall be taken by application in writing to the commission within thirty days after the action or determination appealed from. The commission shall also have the powers and responsibilities of a municipal civil service commission under section seventy-six of the state civil service law. In accordance with the requirements of chapter forty-five, the commission shall promulgate rules of procedure, including rules establishing time schedules, for the hearings and determinations authorized

by this section.

e. The commission, on its own initiative, or upon request of the mayor, council or commissioner, shall have the power and duty to conduct reviews, studies, or analyses of the administration of personnel in the city, including the classification of titles by the commissioner. f. The commission shall prepare and transmit directly to the mayor departmental estimates as required by section two hundred thirty-one. The mayor shall include such proposed appropriations for the commission as a separate agency in the preliminary and executive budgets as are sufficient for the commission to fulfill the obligations assigned to it by this charter or other law.

Chapter Twelve

From the NYS Civil Service Commission website:

Title: THE NEW YORK STATE CIVIL SERVICE COMMISSION

Civil Service Commission Appeal Guidelines

The following explains how the Civil Service Commission (“Commission”) processes appeals, and should be used to gain a general understanding of these appeals. Always remember to check the specific section of law which governs the subject of the appeal, as the statute may provide more detailed and relevant information. Where these guidelines may be inconsistent with a specific Civil Service Law (“CSL”) provision, the specific CSL provision governs. For any questions not addressed by these guidelines, please call the Office of Commission Operations at 518-473-6598 for further information.

A. Subjects of Commission Appeals

Any individual or entity reasonably believing himself, herself or itself aggrieved (“appellant”) by an action or determination of the President of the Commission (“President”) acting as the head of the Department of Civil Service (“Department”) may file an appeal to the Commission [CSL section 6(5)]¹. The following CSL provisions and/or regulations also provide a basis for appeals to the Commission:

1. CSL section 120(2) and 130(5)
2. CSL section 72
3. CSL section 76
4. CSL section 71 and 4 NYCRR section 5.9(e)
5. CSL section 159-a and 4 NYCRR section 78.8
6. 4 NYCRR section 55.4(b)

B. Submitting the Appeal

An appellant shall submit the appeal, with all supporting documents, in writing, in accordance with the deadlines set forth in the particular statute or regulation governing the subject of the appeal. The appellant should include in the appeal to the Commission all information and arguments in support of the appeal, as well as a copy of the letter advising of the final determination when appealing under CSL section 6(5).

If the particular statute or regulation is silent as to the time period within which an appeal shall be filed, appellants should file with the Commission within thirty days of receiving the written determination which is the subject of the appeal.

Appeals should be addressed to the Office of Commission Operations & Municipal Assistance, Department of Civil Service, Albany, New York 12239.

C. Processing of the Appeal

After receiving an appeal, the Commission staff will acknowledge receipt and process the appeal internally by sending it to the appropriate division or its office within the Department for review and recommendation. After receiving relevant information from the appropriate division or office, the Commission staff will notify appellant that the appeal will be presented to the Commission and provide the appellant with a copy of non-privileged materials prepared by Department staff.

Generally, the Commission will consider an appeal based upon the papers submitted. An appellant may request to personally appear before the Commission to present the appeal. If the request is granted, the Commission staff will notify the appellant, in writing, of the date, time and place of an appeal. The Commission may reschedule an appeal as it deems appropriate, with notice to the affected parties.

An appellant may appear before the Commission with representation, and/or with other advocates, where appropriate, but will be requested to provide the Commission with prior notice of the names of any individuals with whom they will be appearing.

D. Hearing the Appeal

In those cases where an appellant and/or a representative appear before the Commission, they will have the opportunity to present arguments in support of their positions. An appellant may also, as deemed appropriate by the Commission, present the statements of other advocates in support of their position. Individuals who appear at the Commission hearing are not administered oaths and are not subject to cross-examination. The proceedings are informal in nature and the formal rules of evidence do not apply. The appellant may choose to submit all or part of their evidence in written form. The President may exclude irrelevant or unduly repetitive evidence from any proceeding, and may limit the time for presentation of the appeal.

Consistent with the CSL, there is no verbatim record kept of the appeal proceeding before the Commission. The appeal record will be closed at the conclusion of the proceeding, unless a party indicates that they wish to submit additional information for consideration. In those cases, the President shall determine the need for additional information and the time periods within which the information, and appropriate responses, shall be submitted. All additional information submitted to the Commission must be in writing. Commission staff will forward copies to any other parties. After receiving all approved submissions, the record on appeal may be closed.

If an appellant or his or her representative fails to appear at the scheduled proceeding, the appeal will be determined based upon the appellant's written submissions.

E. Decision after Hearing the Appeal

After hearing all the evidence and arguments presented, the Commission shall deliberate and determine whether an appeal shall be granted or denied. All final decisions of the Commission shall be in writing. Commission staff will mail to the appellant a copy of the final decision.

Chapter Thirteen

Title: NEW YORK STATE CIVIL SERVICE LAW, DISCIPLINARY § 76 – DISCIPLINARY APPEALS – NYC CIVIL SERVICE COMMISSION

Question: Can I appeal discipline imposed after a hearing or OATH trial? (Excluding NYPD) from the NYC Civil Service Commission website.

How do I file an appeal?

If you received a letter from your agency imposing discipline, that letter should provide instructions for filing an appeal with the CSC or with the New York State Supreme Court. For additional information, please visit the Filing an Appeal section of this website.

Should I Appeal to the CSC or the Supreme Court?

A disciplinary determination can be appealed either to the CSC or the Supreme Court. If you choose to file an appeal with the CSC, the CSC's determination is final and cannot be appealed to the Supreme Court, except in rare circumstances. If you choose to file your appeal at the Supreme Court, you will not be able to appeal that decision to the CSC.

The CSC cannot give advice about whether to file an appeal with the CSC, and appellants may want to consult with an attorney or their union representative.

What is the status of my appeal?

For information regarding individual appeals already filed with the CSC, please email the CSC at appeals@nyccsc.nyc.gov. Please note that

information will only be given to the attorney of record, or named appellant if not represented.

When will I receive the CSC's decision on my appeal?

Decisions are issued as soon as practicable after the CSC has reviewed all submissions on the matter.

In cases where a hearing was held, decisions are generally mailed out within 90 days of the date of the hearing. However, where there is additional time granted to the parties for post-hearing submissions, the decision will be mailed out within 90 days of the last date of such submissions, where practicable.

For additional information, please visit the Filing an Appeal section of this website.

Who can appeal?

Under section 813 of the New York City Charter, the CSC can decide appeals by permanent civil servants who were subject to disciplinary penalties following proceedings held at either their employing agency or before the New York City Office of Administrative Trials and Hearings ("OATH"). Only city employees who hold a position by permanent appointment in the competitive class of the classified civil service appeal under section 76 of the Civil Service Law.

Who may not appeal?

Employees who have been dismissed or otherwise subjected to disciplinary penalties falling under the following categories may not appeal to the CSC.

1. Employees who have not yet received permanent appointment to their respective civil service positions (e.g., individuals in their probationary term), or individuals who are provisional employees;
2. New York City Transit Authority employees seeking to appeal a determination reached by the Tripartite Arbitration Board;
3. Employees disciplined pursuant to arbitration proceedings.
4. Employees who waived their right to appeal pursuant to a settlement agreement.

NOTE: If you are unsure if you qualify to appeal to the CSC, contact your employing agency.

How do I appeal?

Any person qualifying for appeal under Civil Service Law section 76 may appeal an adverse disciplinary penalty to the CSC by sending by first-class, registered, or certified mail, or by delivering personally, a written notice of appeal to the CSC. Appeals must be filed with the CSC within twenty (20) days after the agency head's final disciplinary decision that he/she is appealing to the CSC and must include a copy of the letter notifying the appellant of the penalty being imposed by the agency. A copy of the same notice of appeal must also be sent to the agency whose determination the appellant is appealing.

How are appeals decided?

The CSC reviews the record of the hearings conducted at either OATH or the employing agency, and gives the appellant and employing agency an opportunity to make oral presentations before the CSC, and/or to submit written statements to the CSC.

Arguments before the CSC and written submissions to the CSC are limited to the issues found in the record, and to arguments presented at the hearing below. No new evidence may be presented before the CSC.

Although not required, Appellants obtain the services of an attorney to represent them on the appeal.

The record is reviewed to determine whether the decision of the appointing officer is based on substantial evidence, whether procedural rights and safeguards have been observed, and whether the penalty imposed is reasonable in light of all the circumstances. After reviewing the record, arguments and submissions made on the appeal, the CSC renders a written determination as soon as practicable. In its decision, the CSC may affirm, reverse, modify or remand the determination. It may, in its discretion, direct the reinstatement of the employee or permit transfer to a vacancy in a similar position in another division or department, or direct that the employee's name be placed on a preferred list.

ADJOURNMENTS

Adjournments will be granted only for good cause shown.

Adjournments should be requested as soon as the reasons for the adjournment are known or should have been known to the party requesting the adjournment. Delay in requesting an adjournment may be grounds for denial of the request. Adjournment requests should be made no later than ten days before the scheduled hearing date.

It is incumbent upon the party requesting an adjournment to first contact the other party or opposing counsel to inform him/her of the request for an adjournment. If the opposing party is self-represented, you must first contact the Civil Service Commission and the Commission will attempt to contact the self-represented party.

Requests for adjournment should be made to Commission staff by calling 212-615-8915. After speaking with authorized Commission staff, the party requesting the adjournment must also submit the reasons for the adjournment request in writing and send a copy to all other parties.

Chapter Fourteen

Title: NEW YORK STATE CIVIL SERVICE LAW § 72 – INVOLUNTARY MEDICAL LEAVE APPEALS – NYC CIVIL SERVICE COMMISSION

Question: What can be done if I am placed on a §72 involuntary medical leave?

The CSC hears appeals from determinations of city agencies placing employees on involuntary medical leave, or denying employees reinstatement after being on involuntary leave for a year, when the CSC is specifically designated by the DCAS Commissioner to hear such cases.

City Employees may not appeal involuntary medical leave decisions directly to the CSC. Rather, appeals should be submitted in writing directly to DCAS.

If DCAS designates the CSC to hear an appeal from an involuntary medical leave, appellants are notified by DCAS of the specific procedures and time limitations involved in such an appeal.

In its discretion, the CSC may affirm, reverse, modify or remand the decision of the agency below.

Adjournments

Adjournments will be granted only for good cause shown.

Adjournments should be requested as soon as the reasons for the adjournment are known or should have been known to the party requesting the adjournment. Delay in requesting an adjournment may be grounds for denial of the request. Adjournment requests should be made no later than ten days before the scheduled hearing date.

It is incumbent upon the party requesting an adjournment to first contact the other party or opposing counsel to inform him/her of the request for an adjournment. If the opposing party is self-represented, you must first contact

the Civil Service Commission and the Commission will attempt to contact the self-represented party.

Requests for adjournment should be made to Commission staff by calling 212-615-8915. After speaking with authorized Commission staff, the party requesting the adjournment must also submit the reasons for the adjournment request in writing and send a copy to all other parties.

Chapter Fifteen

Title: CITY UNIVERSITY OF NEW YORK (CUNY), PORT AUTHORITY POLICE DEPARTMENT (PAPD), WESTCHESTER COUNTY APPEALS

The City University of New York (CUNY) has its own Civil Service Commission. That Commission has a website which is located at

<http://www.cuny.edu/employment/civil-service/ccsc.html>

You can Appeal a disqualification to the City University of New York. They will hear your Appeal and consider your documents.

If you are disqualified by CUNY give our office a **call at (888) 998-9984** to discuss your Appeal process or make a free consultation appointment or visit our website at www.sheerinlaw.com.

Some of the more popular jobs are Campus Police Officer and Security at CUNY.

Additionally some labor jobs such as plumber, electrician and Oiler may be CUNY jobs.

Unlike the New York City Civil Service Commission, the CUNY Civil Service Commission does not grant extra time so time is of the essence and you must prepare your package and get your documents, whether it be certificates or degrees to them within thirty days. They will not grant you extra time and they are quite stubborn in this regard.

Call us at (888) 998-9984 to discuss your Appeal process or make a free consultation appointment or visit our website at www.sheerinlaw.com

PORT AUTHORITY POLICE DISQUALIFICATION PROCESS

PORT AUTHORITY POLICE does not have an internal Appeal process. In order to appeal a disqualification by the Port Authority Police you would have to file an Article 78 within four (4) months of the date of the decision. If you are disqualified by the PAPD give our office a call at (888) 998-9984 to discuss your Appeal process or make a free consultation appointment or visit our website at www.sheerinlaw.com

WESTCHESTER COUNTY DISQUALIFICATION PROCESS

WESTCHESTER COUNTY does not have an internal Appeal process. In order to appeal a disqualification by the Westchester County Department of Corrections you would have to file an Article 78 within four (4) months of the date of the decision. If you are disqualified by the PAPD give our office a **call at (888) 998-9984** to discuss your Appeal process or make a free consultation appointment or visit our website at **www.sheerinlaw.com**

Department of Citywide Administrative Services (DCAS) and Committee of Manifest Errors Appeals

DCAS conducts the examinations for the City of New York with various job titles, Oiler, Machinist, Painter, Plasterer, Carpenter, Stationary Engineer, Electrician etc. These disqualifications mainly occur if DCAS decides that you do not have the education and experience criteria for the positions listed. Sometimes the information is not transferred effectively due to a computer glitch.

If you have received a disqualification letter from the Committee of Manifest Errors you only have thirty days from the date of the Notice to appeal your disqualification. The Committee does not grant any additional time to appeal the first part of your disqualification.

If the Committee of Manifest Errors upholds your disqualification despite the your Appeal documents being submitted, they will send you a report stating you have thirty days from the date of notice to file your Appeal with the New York City Civil Service Commission.

Once your Appeal is filed with the New York City Civil Service Commission, they will issue a Notice of Review of Merits. You have to comply within ten (10) days to submit any and all paperwork that was sent with your initial Appeal to the Committee of Manifest Errors.

Upon receipt of the initial Appeal documents, the New York City Civil Service Commission will issue an Acknowledgement of Appeal and state that you have approximately two (2) weeks to submit any additional documents in support of your Appeal.

If you are disqualified by DCAS for any position give our office a call at (888) 998-9984 to discuss your Appeal process or make a free consultation appointment or visit our website at www.sheerinlaw.com

Visit my blog at civilservice.sheerinlaw.com for summaries of New York State Civil Service Law cases and links to interesting Civil Service Law internet sites.

Useful Links

www.counsel.nysed.gov

www.nyc.gov/html/dcas/html/home/home.shtml

www.nyc.gov/site/csc/index.page

www.sheerinlaw.com

Success Stories

N.Y.P.D. POLICE CANDIDATE DISQUALIFIED FOR PSYCHOLOGICAL REASONS

Applicant was an NYPD Police Candidate for the New York City Police Department. At his initial psychological examination by an agency psychologist he was found not suited for the position. Mr. Sheerin, working closely with an expert in the field of law enforcement psychological disqualifications, established to the New York City Civil Service Commission that the opinions of the agency psychologists were incorrect. After further consideration, the Commission reversed the disqualification.

NYPD MEDICAL DISQUALIFICATIONS NYPD CANDIDATE DENIED FOR COLOR PERCEPTION

Applicant was denied from the NYPD for color perception. Mr. Sheerin argued the appeal and presented expert opinion evidence in favor of the candidate. It was shown to the NYPD that some of the medical testing used by the agency was not dependable and more reliable later tests confirmed the candidate would be able to adequately perform the duties of an NYPD Police Officer.

NYPD POLICE CANDIDATE DENIED FOR ORTHOPEDIC REASONS

Applicant was denied a position with the NYPD due to a nonunion scaphoid fracture in the right hand. Mr. Sheerin with documented evidence presented to the NYPD that the fracture was completely healed and TC was more than capable of fulfilling the duties required from an NYPD Police Officer.

N.Y.P.D. POLICE CANDIDATE DENIED DUE TO ORTHOPEDIC CONDITION

Applicant was an NYPD Police Candidate. Applicant was unaware of existing arthritis in both his shoulders and right hip. Mr. Sheerin put together an

argument stating that applicant was an active individual who was able to perform taxing physical activities without strain to his shoulders and hips. When more testing evidence was presented to the NYPD, the disqualification was rescinded by the NYPD and the appeal dismissed.

NYPD BACKGROUND DISQUALIFICATION NYPD CANDIDATE DISQUALIFIED DUE TO OMISSION OF PERTINENT FACTS, ARREST RECORD, DRIVING RECORD AND CRIMINAL COURT SUMMONSES

Applicant was disqualified due to his Arrest record, driving record and Criminal Court summonses. In his cover letter enclosing an affidavit from Appellant, Mr. Sheerin argued that Appellant has shown remarkable improvement regarding his driving. Appellant's criminal court summonses were not due to violence but being in the wrong place at the wrong time. When the candidate appealed his disqualification, he was already working for a public agency for four years with no disciplinary actions.

NYPD CANDIDATE DISQUALIFIED DUE TO BACKGROUND INVESTIGATION

Applicant was disqualified when her background revealed she had omitted providing certain information and revealed she had tried marijuana once. When Applicant was 12 yrs. old, her parents had gotten into a domestic dispute and NYPD Police Officers arrived on the scene. This information was revealed when an address check was conducted as part of her background investigation. NB was also disqualified because she had tried marijuana once. This incident occurred before she had taken the NYPD exam and Mr. Sheerin argued that this should not have been held against her. NYPD rescinded their disqualification and continued processing the Appellant application.

N.Y.P.D. POLICE CANDIDATE DENIED DUE TO DRIVING RECORD

Applicant was an NYPD Police Candidate. Due to an active status in the military candidate was unaware of these infractions on his driving record and could not resolve them immediately due to deployment. Mr. Sheerin presented this case in front of the New York City Civil Service Commission and established that when Appellant became aware of the infractions, he reported them consistently and credibly. After further consideration, the

Commission reversed the disqualification.

NYPD CANDIDATE DISQUALIFIED DUE TO BACKGROUND INVESTIGATION

Applicant was disqualified when her background revealed she had omitted providing certain information and revealed she had tried marijuana once. When Applicant was 12 yrs. old, her parents had gotten into a domestic dispute and NYPD Police Officers arrived on the scene. This information was revealed when an address check was conducted as part of her background investigation. NB was also disqualified because she had tried marijuana once. This incident occurred before she had taken the NYPD exam and Mr. Sheerin argued that this should not have been held against her. NYPD rescinded their disqualification and continued processing the Appellant application.

NEW YORK CITY DEPARTMENT OF CORRECTIONS MEDICAL DQ NEW YORK CITY CORRECTIONS DEPARTMENT APPLICANT DISQUALIFIED FOR MEDICAL CONDITION

Applicant was a New York City Probation Officer candidate. The New York City Department of Corrections claimed that the candidate had a medical condition, causing his disqualification from employment. Mr. Sheerin argued the appeal before the New York City Civil Service Commission, and presented expert opinion evidence in favor of the candidate. It was shown to the Commissioners that Appellant suffered from White Coat syndrome which was the reason why his initial testing was irregular. When more testing confirmed that the candidate was in good health, the disqualification was reversed by the Commission.

NEW YORK CITY DEPARTMENT OF CORRECTIONS PSYCHOLOGICAL DQ CORRECTIONS OFFICER CANDIDATE DISQUALIFIED FOR PSYCHOLOGICAL REASONS

Applicant was disqualified by an NYCDOC Psychologist. Mr. Sheerin with the help of an expert argued that candidate was psychologically qualified for the position. Applicant was reevaluated with an Psychologist after review of

the report and arguments and the New York City Department of Corrections reversed the disqualification and continued the processing of his application.

Applicant was disqualified by an NYCDOC Psychologist because of his personality traits being incompatible with the unique demands of the position of a NYC Corrections Officer. Mr. Sheerin along with GW's expert report argued that candidate had no history of emotional or physical abuse or severe dysfunctional relationships. Applicant was reexamined by another NYCDOC Psychologist, the disqualification was rescinded and his application continued to be processed.

NYCDOC BACKGROUND DQ CORRECTIONS OFFICER CANDIDATE DISQUALIFIED DUE TO ARREST AND CONVICTION RECORD

Applicant was disqualified by the NYCDOC due to his background investigations. After putting together a detailed appeal package with a timeline, Mr. Sheerin was successful in arguing that it had almost been ten (10) years since candidate had any interaction with law enforcement and shows that he has matured and changed his behavior. NYCDOC rescinded their disqualification and continue processing candidate's application.

FDNY CANDIDATE DISQUALIFIED FOR PSYCHOLOGICAL REASONS

Applicant was a Firefighter candidate for the Fire Department of New York. At his initial psychological examination by an agency psychologist he was found not suited for the position. Mr. Sheerin, working closely with an expert in the field of law enforcement psychological disqualifications, established to the New York City Civil Service Commission that the opinions of the agency psychologists were incorrect. After further consideration, the Commission reversed the disqualification.

FIRE DEPARTMENT OF NEW YORK APPLICANT DISQUALIFIED FOR ALLEGED PULMONARY CONDITION

Applicant was an FDNY candidate. FDNY disqualified candidate due to an abnormal score on his Pulmonary Function Test. Mr. Sheerin established in the Appeal with expert opinion statements that candidate was physically

competent for the position and his pulmonary function when initially tested by the FDNY was compromised due to being ill. Upon receipt of documented evidence, the FDNY withdrew their disqualification.

Applicant was seeking the position of a Firefighter. The FDNY disqualified candidate due to a low score on his Metacholine Challenge Test. Mr. Sheerin established in the Appeal with expert opinion statements that the candidate was physically capable of performing any and all duties of a Firefighter. Upon receipt of the documented evidence, the FDNY withdrew their disqualification.

FDNY CANDIDATE DENIED BECAUSE OF MEDICAL RECORD

Applicant was disqualified due to his medical record. Mr. Sheerin established in the Appeal process with expert opinions that candidate was physically competent for the position of a New York City Firefighter. Upon receipt of documented evidence, the FDNY rescinded their disqualification.

Applicant was disqualified due to an abnormal reading on a Pulmonary Function Test. The FDNY considered the results of this test invalid because it has not been administered correctly by a respiratory therapist. Applicant filed the appeal with the New York City Civil Service Commission. Mr. Sheerin argument consisted of comparing the results in all PFT's that were administered to the candidate and the results showed that Appellant was more than qualified for the position of an FDNY Firefighter.

NCPD CANDIDATE DISQUALIFIED FOR PSYCHOLOGICAL REASONS

Applicant was disqualified by an NCPD Psychologist according to his ability to exercise good judgment. Mr. Sheerin with the help of an expert argued that Judgment involves the mental act of comparing or evaluating choices within the framework of a given set of values for the purpose of electing a course of action. Applicant was reevaluated with an NCPD Psychologist after review of the report and arguments and the Nassau County Civil Service Commission reversed the disqualification and continued the processing of his application.

NASSAU COUNTY POLICE OFFICER DISQUALIFIED FOR BACKGROUND REASONS

Applicant was a Nassau County Police Officer candidate who was processing for the position when he was denied two days before the new Academy class due to a prior work history related to a public Agency. After appealing his disqualification and providing extensive explanations for the incidents related to candidate's prior private work history, the Nassau County Civil Service Commission reversed their disqualification and let the candidate into the new Academy class.

Applicant's was a Nassau County Police Officer candidate who was denied because she could not establish a consistent residency timeline for her Village of preference. Applicant was already an NYPD Police Officer but was seeking employment with the Nassau County Police Department. Applicant had been born and raised in a Village in Nassau County. Due to unforeseen circumstances, she had to move to another town within Nassau County for approximately eighteen (18) months before she could come back to her hometown. The Commission denied her application for Village preference and disqualified her. Mr. Sheerin filed an Article 78 case in Nassau County Supreme Court which resulted in the Commission reconsidering the affirmed disqualification of JG and overturning their decision to continue processing candidate's application.

Applicant lived in Nassau County but worked as an NYPD Police Officer. Applicant was seeking a Nassau County Police Officer position with the NCPD. Due to USPS not delivering applicant's mail to the correct address, he failed to report for his physical agility testing and was disqualified by the Nassau County Civil Service Commission. After thoroughly investigating the matter, Mr. Sheerin put together a compelling argument outlining the USPS system failure to deliver applicant's mail to the right address. Upon review of applicant's appeal documents, the Commission reversed their disqualification and continue processing candidate's application.

Applicant was denied the position of a Nassau County Police Officer due to an orthopedic condition. Mr. Sheerin put together a compelling argument along with orthopedic reports from different doctors/surgeons as well as physical therapy notes with a timeline stating that candidate was in excellent health and his prior injury of a healed bone should not prevent him from fulfilling the duties of a Nassau County Police Officer.

Applicant was an older gentleman who was retired and seeking a part time job as a security officer on Nassau County campuses. The audiology equipment used by the Commission to administer hearing tests is outdated and Mr. Sheerin along with his expert identified the issue, had the candidate's

hearing re-tested at a state of the art facility and was successful in getting the disqualification overturned.

NASSAU COUNTY POLICE OFFICER CANDIDATE MEDICALLY DISQUALIFIED

Applicant was a Nassau County Police Officer candidate who was disqualified for cardiac condition and color perception. Mr. Sheerin established in the Appeal process with expert opinions that candidate was physically competent for the position of a Police Officer. Upon receipt of documented evidence, the Nassau County Civil Service Commission rescinded the disqualification.

Applicant was a Nassau County Police Officer candidate who was disqualified for orthopedic condition related to lower back pain, herniated disc, pulmonary condition (shortness of breath when running) and severe obstructive sleep apnea which precluded his ability to fulfill the physical requirements of a Police Officer. During the Appeal process, Mr. Sheerin established that candidate was physically competent with expert opinions and reports. Upon receipt of the evidence, the Nassau County Civil Service Commission rescinded their disqualification.

Applicant was an NCPD Police Candidate who was unaware of existing blood pressure issues. Mr. Sheerin put together an argument stating that two different readings showed normal blood pressure readings and those readings were within the required standards.

NASSAU COUNTY CORRECTIONS OFFICER CANDIDATE DISQUALIFIED FOR PSYCHOLOGICAL REASONS

Applicant was a Corrections Officer candidate for the Nassau County Department of Corrections. At his initial psychological examination by an agency psychologist he was found not suited for the position. Mr. Sheerin, working closely with an expert in the field of law enforcement psychological disqualifications, established to the Nassau County Civil Service Commission that the opinions of the agency psychologists were incorrect. After further consideration, the Commission reversed the disqualification.

NASSAU COUNTY CORRECTIONS OFFICER DISQUALIFIED FOR BACKGROUND REASONS

The Nassau County Civil Service Commission denied a Corrections Officer candidate due to his failure to finish school, prior private employment issues and arrest record. Mr. Sheerin represented the client and put together a compelling argument stating that candidate has turned his life around and worked very hard to get to where he is today despite past circumstances out of his control. The Commission after reviewing the appeal argument rescinded their disqualification for Applicant.

DCAS DISQUALIFIES CANDIDATE FOR EDUCATION AND EXPERIENCE CATEGORY FOR STATIONARY ENGINEER (ELECTRIC) TITLE.

Applicant was disqualified for the lack of education and experience when applying for the Stationary Engineer (Electric) position. Even though Appellant worked as an Assistant Electrical Engineer for NYCT as well as the NYCDEP as well as private companies. Mr. Sheerin put together an Appeal package which outlined specific requirements that DCAS was looking for when it came to experience handling certain machines with certain voltage. DCAS rescinded the disqualification upon receipt of the Appeal docs.

Applicant was disqualified for the lack of education and experience after he took the test for Stationary Engineer (Electric) position. Appellant had worked as an Electrician for the City of New York for more than ten years but DCAS still found him not qualified for the position. The Appeal package which outlined specific requirements submitted by Mr. Sheerin resulted in DCAS rescinding their disqualification.

Applicant was disqualified for the lack of education and experience after he took the test for Stationary Engineer (Electric) position. Appellant had worked as an Electrician for the City of New York for more than ten years but DCAS still found him not qualified for the position. Appellant had also been offered the job provisionally by the NYCDEP and DCAS still did not find the candidate suitable for the Stationary Engineer position. The Appeal package which outlined specific requirements submitted by Mr. Sheerin resulted in DCAS rescinding their disqualification.

DCAS DISQUALIFIES CANDIDATE FOR EDUCATION AND EXPERIENCE CATEGORY FOR CUSTODIAN ENGINEER TITLE.

Applicant was disqualified for the lack of education and experience after he took the test for a Custodian Engineer position. When filling out the education and experience portion of the application for the test, a software glitch resulted in the information not transferring over to DCAS. Mr. Sheerin argued that a software error is something candidate should not be accountable for especially since applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

Applicant was disqualified for the lack of education and experience after he took the test for the Custodian Engineer position. After compiling all his education and experience into a table with specific tasks outlined and the amount of time spent of each task, the disqualification was rescinded by DCAS.

DCAS DISQUALIFIES CANDIDATE FOR EDUCATION AND EXPERIENCE CATEGORY FOR PAINTER TITLE

Applicant was disqualified for the lack of education and experience after he took the test for a Painter position. When filling out the education and experience portion of the application, candidate did not include enough detail as to what his experience at certain tasks was. Mr. Sheerin argued that candidate should not be accountable because DCAS's instructions were not specific as to what information they needed when applying for the test especially since applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

Applicant was disqualified for the lack of education and experience after he took the test for a Painter position. When filling out the education and experience portion of the application for the test, a software glitch resulted in the information not transferring over to DCAS. Mr. Sheerin argued that a software error is something candidate should not be accountable for especially since applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

DCAS DISQUALIFIES CANDIDATE FOR EDUCATION AND EXPERIENCE CATEGORY FOR MACHINIST TITLE

Applicant was disqualified for the lack of education and experience after he

took the test for a Machinist position. When filling out the education and experience portion of the application, candidate did not include enough detail as to what his experience at certain tasks was. Mr. Sheerin argued that candidate should not be accountable because DCAS's instructions were not specific as to what information they needed when applying for the test especially since applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

Applicant was disqualified for the lack of education and experience after he took the test for a Painter position. When filling out the education and experience portion of the application, candidate did not include enough detail as to what his experience at certain tasks was. Mr. Sheerin argued that candidate should not be accountable because DCAS's instructions were not specific as to what information they needed when applying for the test especially since applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

DCAS DISQUALIFIES CANDIDATE FOR EDUCATION AND EXPERIENCE CATEGORY FOR OILER TITLE

Applicant was disqualified for the lack of education and experience after he took the test for a Painter position. When filling out the education and experience portion of the application, candidate did not include enough detail as to what his experience at certain tasks was. Mr. Sheerin argued that candidate should not be accountable because DCAS's instructions were not specific as to what information they needed when applying for the test especially since Applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

Applicant was disqualified for the lack of education and experience after he took the test for a Painter position. When filling out the education and experience portion of the application, candidate did not include enough detail as to what his experience at certain tasks was. Mr. Sheerin argued that candidate should not be accountable because DCAS's instructions were not specific as to what information they needed when applying for the test especially since Applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

DCAS DISQUALIFIES CANDIDATE FOR EDUCATION AND EXPERIENCE CATEGORY FOR PLASTERER TITLE

Applicant was disqualified for failing the practical part of DCAS's examination

for the Plasterer title. After numerous attempts to resolve this issue, Mr. Sheerin finally demanded that a copy of the results be sent to him to review what exactly in the practical disqualified the candidate especially since the candidate had been working for the provisional title for several years.

DCAS DISQUALIFIES CANDIDATE FOR EDUCATION AND EXPERIENCE CATEGORY FOR CARPENTER TITLE

Applicant was disqualified for the lack of education and experience after he took the test for a Carpenter position. When filling out the education and experience portion of the application, candidate did not include enough detail as to what his experience at certain tasks was. Mr. Sheerin argued that candidate should not be accountable because DCAS's instructions were not specific as to what information they needed when applying for the test especially since applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

Applicant was disqualified for the lack of education and experience after he took the test for a Carpenter position. When filling out the education and experience portion of the application, candidate did not include enough detail as to what his experience at certain tasks was. Mr. Sheerin argued that candidate should not be accountable because DCAS's instructions were not specific as to what information they needed when applying for the test especially since applicant had the required education and experience for the position. DCAS rescinded their disqualification in this case.

DCAS DISQUALIFIES CANDIDATE FOR EDUCATION AND EXPERIENCE CATEGORY FOR ELECTRICIAN TITLE.

Applicant was disqualified for the lack of education and experience when applying for the Electrician position. Even though Appellant worked as an Electrician for many different companies contracted by New York City, DCAS still found the candidate not qualified. After putting together all the relevant information including copies of paystubs and social security earnings to establish a timeline and prove that candidate was competent and qualified, DCAS rescinded the disqualification upon receipt of the Appeal docs.

SUFFOLK COUNTY DEPARTMENT OF CORRECTIONS CANDIDATE DISQUALIFIED FOR MEDICAL REASONS WITHOUT AGENCY DOCTOR EXAMINATION

Candidate applicant was a Suffolk Corrections candidate who worked as a bartender. He had been disqualified for orthopedic disability but never received a physical examination as a part of his application process. He was forced to sue and have a judge reverse his disqualification.

SUFFOLK COUNTY EMT TERMINATION

Applicant worked for a public agency in Suffolk County as an EMT. He has been on the job full-time for six (6) years. Applicant was terminated from his position due to personal differences with board members without a hearing. Mr. Sheerin filed an Article 78 petition which was successful in granting the Appellant the formal disciplinary procedures and reinstatement on the job.