
Legal Update for Police Psychologists – 2007



**International Association
of Chiefs of Police, Inc.
Police Psychological Services Section**

**Annual Conference – New Orleans, LA
October, 2007**

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Topics

- Counseling: EAP Programs
 - Counseling: Disclosure of the Results and Privacy
 - Psychological Exams: Screening of Applicants
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 - Psychological Exams: Refusal to Cooperate
 - Psychological Exams: Retaliatory Motive
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Psychological Counseling Employee Assistance Programs

- “The EAP is a counseling program that helps employees manage job-related stress, solve personal problems, and deal with addictive or suicidal behaviors. Referral to the Philadelphia Police Department’s EAP is a non-punitive action. EAP use by the officers is voluntary and does not appear on their employment record. Because plaintiff does not even allege otherwise, she cannot make out a *prima facie* case on this claim.” Webb v. City of Philadelphia, #05-5238, 2007 U.S. Dist. Lexis 42727, 100 FEP Cases (BNA) 1271 (E.D. Pa.).

View at <http://www.aele.org/law/2007FPSEP/webb-phila.html>

Psychological Exams and Standards Disclosure of the Results and Privacy

- Confidential records and testimony relating to communications between a plaintiff and his psychotherapist are privileged and not discoverable. Koch v. Cox, #06-5134, 489 F.3d 384, 2007 U.S. App. Lexis 14019 (D.C. Cir.).

View at <http://caselaw.lp.findlaw.com/data2/circs/dc/065134a.pdf>

Psychological Exams and Standards Screening of Applicants

- New York court rejects a judicial challenge brought by a police applicant. Although his personal doctor found no disabling conditions, two psychologists and a psychiatrist found that he lacked the skills necessary to carry out the functions of a police officer. The opinion of the applicant’s privately retained expert was not controlling. Matter of Murray v. Co. of Nassau Civ. Serv. Cmsn., #000132/07, 2007 NY Slip Op 50927(U), 2007 N.Y. Misc. Lexis 2579 (Nassau Co. Sup.).

View at http://www.courts.state.ny.us/REPORTER/3dseries/2007/2007_50927.htm

- A person seeking reinstatement as a New York corrections officer after recovering from an off-duty injury must pass the same psychological screening examination administered to applicants. Coleman v. N.Y., #501363, 2007 NY Slip Op 01936, 38 A.D.3d 1044, 830 N.Y. Supp.2d 874, 2007 N.Y. App. Div. Lexis 2653 (3rd Dept.).

View at http://www.courts.state.ny.us/reporter/3dseries/2007/2007_01936.htm

Psychological Exams and Standards Conduct Justifying a Required Exam

- Although a temporary transfer and compulsory fitness-for-duty examinations arguably

constituted adverse employment actions, a Bureau of Prisons employee failed to prove a connection to an earlier filing of an EEOC complaint. Management established legitimate, non-retaliatory reasons for her transfer and the FFD exam, based on her outbursts and statements regarding a brain tumor. The warden legitimately was concerned that she could no longer perform her job duties. Murry v. Attorney General, #06-15764, 2007 U.S. App. Lexis 11473 (Unpub. 11th Cir. 2007).

View at <http://www.ca11.uscourts.gov/unpub/ops/200615764.pdf>

Psychological Exams and Standards Refusal to Cooperate

- Eighth Circuit affirms the termination of a police employee that failed to cooperate in a Fitness For Duty Exam (FFDE). “By refusing to provide [the psychologist] the opportunity to review her medical records and to discover the root of [her] stress and anxiety, [she] created a stalemate in which KCPD had little choice but to terminate [her] rather than return her to the position from which [her] stress and anxiety originated.” Thomas v. Corwin, #06-1496, 483 F.3d 516, 2007 U.S. App. Lexis 7601, 100 FEP Cases (BNA) 297 (8th Cir.).

View at <http://www.ca8.uscourts.gov/opndir/07/04/061496P.pdf>

Psychological Exams and Standards Retaliatory Motive

- Federal appeals court affirms a liability award against a city over the wrongful termination of two women police officers that were found psychologically unfit for service. The jury had awarded each of the plaintiffs \$2.5 million -- \$1 million in compensatory damages, \$223,080 in back pay and \$1,276,920 in front pay. The trial court then reduced the non-pay verdicts from \$1 million to \$350,000. The appeals court panel affirmed the reduction of damages decision. Denhof v. City of Grand Rapids, #05-1819, 494 F.3d 534, 2007 U.S. App. Lexis 5605, 2007 FED App. 0163N (Unpub. 6th Cir.).

View at <http://www.ca6.uscourts.gov/opinions.pdf/07a0163n-06.pdf>

Stress Related Claims and Defenses:

- Illinois appellate court overturns the termination of a fire paramedic that physically and verbally abused a patient who was in physical and emotional distress. The disciplinary board failed to assess whether the paramedic’s bipolar disorder and depression affected his actions. “... we conclude that it was unreasonable for the Board to have discharged plaintiff for cause without having made a specific finding as to whether plaintiff’s illnesses were substantially related to his misconduct.” The matter was remanded for

evidentiary findings. Hermesdorf v. Wu, #2-05-0877, 25 IER Cases (BNA) 1703, 2007 Ill. App. Lexis 288 (2d App. Dist.).

View at

<http://www.state.il.us/court/Opinions/AppellateCourt/2007/2ndDistrict/March/2050877.pdf>

- Although a pension board found that a police officer was not longer disabled, the NYPD was justified in rejecting his return to duty for psychological reasons. Ciacciullo v. Kelly; City of N.Y. v. NYC Civ. Serv. Cmsn., #50, 2006 N.Y. Lexis 958 (N.Y. 2006).

View at <http://caselaw.lp.findlaw.com/data/ny/cases/app/50mem06.pdf>

- Appellate court affirms the rejection of a correction officer's job-related stress claim. He chose to work at a maximum-security prison and should have anticipated that he would interact with dangerous inmates and unusual situations, including inmates throwing urine and fecal matter. Babich v. W.C.A.B. (PA Dept. of Corrections), #1472C.D.2006, 2007 Pa. Commw. Lexis 169.

View at http://www.courts.state.pa.us/OpPosting/CWealth/out/1472CD06_4-12-07.pdf

- Federal Merit Board finds undisputed evidence established that an employee was angry, severely depressed, anxious, suffered from post traumatic stress disorder, suicidal ideation, psychosis, was obsessed with management, and posed a threat to his colleagues. His psychiatric condition was precipitated and exacerbated by job-related stress to the point it became disabling such that disability was adequately proved. Thorne v. Office of Personnel Management, #AT-844E-06-0227-I-1, 2007 MSPB 75 (MSPB 2007).

View at <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=246101&version=246373&application=ACROBAT>

Suicide

Monthly Law Journal Article:

[Suicide and Public Safety Officers: Disciplinary, Medical and Compensation Issues](#)

- Liability Considerations
- Grounds for Termination
- Disability or Medical Discrimination
- Medically Unsupported Stereotypes?
- Behavior Not Suicidal
- Medical Records and Examinations
- Job-Related Death Benefits and Workers Compensation
- Employee Assistance