
Recent Judicial Decisions Regarding Police Psychological Evaluations

Martin J. Mayer, Esq.

JONES & MAYER

3777 N. Harbor Blvd.

Fullerton, CA 92835

(714) 446-1400

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Fitness For Duty Evaluations

Weisbarth v. Geauga Park Dist., #06-4189, 2007 FED App. 0337P, 2007 U.S. App. Lexis 20261, (6th Cir. 2007), decided August 24, 2007
<http://www.ca6.uscourts.gov/opinions.pdf/07a0337p-06.pdf>

Psychological determination that Plaintiff (park ranger and fully commissioned police officer) was unfit for duty was not overturned by Plaintiff's claim that her right to free speech was infringed in the process that led to the psychological evaluation. The case was dismissed.

Summary – Plaintiff was a Park Ranger in Ohio (under Ohio law, park rangers are fully commissioned police officers). Due to “morale” problems in the department, a paid consultant evaluated the department. Plaintiff related negative comments to the consultant. Subsequently, independent of the consultants’ report, Plaintiff took a leave of absence without notifying her superior (among other actions), prompting a psychological evaluation of by the department.

The department’s psychologist found Plaintiff unfit for duty – then Plaintiff’s union psychologist found her fit for duty – then a third psychologist concluded the first one was right that Plaintiff was unfit for duty. Finally, Plaintiff is let go. Plaintiff brings a First Amendment claim against the department alleging she was let go because she spoke freely with the consultant. The court found that there was no free speech violation and the determination of Plaintiff being unfit for duty stands. The case was dismissed by the district court, and the appellate court affirmed this decision.

Estate of Davis v. City of N. Richland Hills, #4:00-CV-438-Y, 2007 U.S. Dist. Lexis 17648 (D. Tex. 2007), decided March 13, 2007

Defendant North Richland Hills Police Department is not liable for failure to require a psychological examination of potential tactical team members selected from officers already on the force.

Summary - Police Department executed a “no knock” search warrant of residence that resulted in shooting death of Troy Davis by Officer Hill. Circumstances surrounding the death are disputed. Officer Hill had an adverse employment history, argued Plaintiff, and thus there should have been a psychological screening of potential members of the tactical team. Court found no evidence of “deliberate indifference” on part of Police Department in not requiring said test, only speculative arguments. Summary judgment granted to D.

Marconi v. Chicago Heights Police Pension Bd., #101418, 225 Ill. 2d 497, 870 N.E.2d 273 (Ill. 2006), filed October 19, 2006 and modified May 29, 2007.
<http://www.state.il.us/court/OPINIONS/SupremeCourt/2007/May/101418.pdf>

Departmental decision to reevaluate psychological evaluation of disabled officer, and

conclusion officer no longer should have disability, affirmed by Illinois Supreme Court.

Summary – Police officer with the Chicago Police Department was receiving disability payments based upon psychological evaluations that initially determined the officer was unfit for duty and should receive a pension. However, a later psychological review found the officer was no longer disabled, and thus should not be receiving his pension anymore. The case took some twists and turns, moving up through the courts, when the officer sued to have his disability reinstated. The Illinois State Supreme Court finally settled the matter by ruling that the department’s administrative decision was to be respected concerning the final psychological evaluation which concluded the officer should not be receiving a pension anymore.

Franchak v. D.C. Metro. Police Dep’t, #06-CV-756, 2007 D.C. App. Lexis 468 (D.C. 2007), decided August 2, 2007 <http://www.dcappeals.gov/dccourts/appeals/pdf/06-CV-756.PDF>

Police Department’s denial of an officer’s request for administrative sick leave (based on the officer’s psychological evaluation) is affirmed by the court.

Summary - Appellant police officer filed a claim for administrative sick leave due to an on-duty psychological injury/illness, acute stress disorder or post traumatic stress disorder. Appellee police department classified the officer’s illness as a non-performance-of-duty injury and denied his claim. Subsequently, the Superior Court of the District of Columbia affirmed the department’s decision. The officer appealed. The officer challenged the agency’s decision on the grounds that the department applied an incorrect legal standard and its conclusions were not based on substantial evidence. The officer argued that the medical claims review officer based the decision on the Stress Protocol “critical incident” standard, which he maintained was incorrect, and that the claim satisfied the test in Dailey v. 3M Co. & Northwest Nat. Ins. Co.

The appellate court concluded that the agency reasonably relied on Dailey in deciding the officer’s claim. The appellate court found no reason to disturb the agency’s decision that the subject incident was not “beyond the stresses police officers face on a daily basis,” because the officer suffered no physical injury, had no history of a prior psychological illness, specified that the cause of his injury/illness was “officer involved in shooting,” and explained that the problem with the shooting was that he was the person who initiated the stop and he was having a hard time dealing with the fact that he put another officer in a position to possibly being hurt or killed. The agency’s denial of the officer’s claim was affirmed.

Reed v. Metro. Gov’t of Nashville, 2#3:05-0835, 007 U.S. Dist. Lexis 25652 (D. Tenn. 2007), filed April 5, 2007

Officer temporarily decommissioned - to undergo treatment after an adverse psychological evaluation - determined to have no legal basis to sue the department under the ADA, local state law, or for either gender discrimination or age discrimination.

Summary – An officer of the Nashville/Davidson County Police Department had complaints from co-workers to her supervisor about unusual behavior. The officer's supervisor referred her to an independent psychologist for evaluation. The evaluation concluded that the officer was not fit for duty, yet with continued treatment the officer could be reinstated. Subsequently, the officer was temporarily decommissioned. The officer was eventually reinstated and recommissioned. Nevertheless, the officer brought a complaint against the department, alleging the psychological evaluation and the subsequent action taken based on the report, was a component of gender discrimination, violation of both the ADA and the Tennessee Human Rights Act, and retaliation. The court granted summary judgment to the Police Department and dismissed the case, finding no legal basis for the officer's claims.

Pre-Employment Screening

Nilsson v. City of Mesa, #05-15627, 2007 U.S. App. Lexis 21912 (9th Cir. 2007), filed September 13, 2007
[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/5D57D4DAED10B76588257354007DEA39/\\$file/0515627.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/5D57D4DAED10B76588257354007DEA39/$file/0515627.pdf?openelement)

Applicant for police officer position fails psychological test while passing all other tests. Applicant sues under ADA and Title VII. Court finds for Police Department.

Summary - The applicant, in conjunction with her employment application, agreed to waive all her legal rights in regards to city's background investigation. The city extended a conditional offer of employment, subject to her successfully completing several evaluations, however, she failed the psychological evaluation and was not hired. The applicant argued that she did not understand the waiver, but the court held that based on her college-level education and prior work experience with a police department, she possessed sufficient education and experience to understand the waiver.

The court also held that the waiver precluded the ADA and § 1983 claims because they resulted from actions taken in the course of the investigation. However, the Title VII claim rested on her assertion that she was not hired due to her filing an Equal Employment Opportunity Commission (EEOC) complaint against her former employer; accordingly, her Title VII claim was not barred by the waiver. However, she failed to raise a genuine issue of material fact as to whether the city's reason for not hiring her was her failure to pass a psychological evaluation; therefore her Title VII and state retaliation claims failed. The judgment was affirmed.

Terry v. Town of Morristown, #06-1788, 2007 U.S. Dist. Lexis 51837 (D.N.J. 2007), decided July 7, 2007

Deference of federal court to state court concerning an appeal of an adverse psychological pre-employment screening for potential police officer candidate.

Summary – Repeated pre-employment psychological screenings of Plaintiff determined that Plaintiff was psychologically unfit (propensity to aggression, poor judgment, and impulsive nature) to be a candidate for the position of police officer. Plaintiff appealed this administrative decision to the Superior Court of New Jersey, where the outcome is still pending. The US District Court for NJ has abstained from hearing this case, deferring to the state court’s pending judgment. Significance is application of Younger case (avoid federal court interference with pending state judicial proceedings absent extraordinary circumstances) to non-criminal judicial proceedings, in this case an administrative appeal, regarding the determination of candidate’s psychological fitness to be a police officer.

Matter of Murray v. County of Nassau Civ. Serv. Commn., 2007 NY Slip Op 50927(U), 15 Misc.3d 1131A, 841 N.Y. Supp.2d 219 (N.Y. Misc. 2007), decided March 16, 2007
http://www.courts.state.ny.us/REPORTER/3dseries/2007/2007_50927.htm

Court dismisses claim of candidate for police officer position who argued that the department acted arbitrarily and capriciously when rejecting him based on adverse pre-employment psychological screening.

Summary – Unsuccessful candidate for police officer position with Nassau County Police Department by reason of his alleged failure to meet the psychological requirement of the position filed suit against the department.

The rejected applicant declared that the department acted in an arbitrary and capricious manner when it disqualified him from the position of police officer, and he sought appointment by the court to the position sought. The unsuccessful candidate underwent a psychological screening process by two psychologists on two separate occasions, and he was then notified in a letter dated June 13, 2006 of his disqualification for police officer “for failure to meet the psychological requirement of that position.”

The rejected candidate then underwent a psychological examination by a doctor of his own choosing who found no evidence of a “pattern of dysfunctional behavior or significant maladaptive personality traits,” and further opined that the rejected applicant was “fully mentally competent and suitable for employment as a police officer.”

Thereafter, the department did another evaluation of the candidate and again concluded he lacked the skills necessary to carry out the functions of a police officer and the candidacy was again denied. Upon review of the matter, the court found that the department’s determination was not irrational but rather supported by substantial evidence, and the case was dismissed.

Psychological Evaluation as Intimidation

Dodd v. SEPTA, #06-4213, 2007 U.S. Dist. Lexis 46878 (E.D. Pa. 2007), decided June 26, 2007

Court allowed Plaintiff's charge, that a psychological evaluation order was simply done out of retaliation, to proceed to trial.

Summary – Plaintiff had been a police officer with the Southeastern Pennsylvania Transportation Authority (“SEPTA”) for many years. When Plaintiff was terminated subsequent to many conflicts within the department, most of them related to his wearing of dreadlocks as a symbol of his Rastafarian religion, Plaintiff sued the department.

Amidst the many allegations against the department was the one that Plaintiff was ordered to undergo a psychiatric/psychological evaluation as a form of intimidation. The Police Department moved for a dismissal of Count V in the Complaint, brought under 42 USC § 1983, which alleged “retaliation against the Defendant.” The Court, while dismissing some of the other Counts, did NOT dismiss Count V, finding that:

“...Mr. Dodd further alleges that Chief Evans subjected him to a psychiatric evaluation and an Internal Affairs investigation...Taking these allegations as true and drawing all inferences in favor of Mr. Dodd, as the Court must on a motion to dismiss, Mr. Dodd has alleged sufficient facts to demonstrate that Chief Evans, Deputy Chief Scott and Captain Rowell participated in violating his rights, that they directed others to violate them, or that they had knowledge of and acquiesced in their subordinates' violations. Thus, the Section 1983 claim against the Individual Defendants may go forward.” Dodd v. SEPTA, 2007 U.S. Dist. Lexis 46878, *23-24 (D. Pa. 2007)

Thus, there was standing to proceed to trial on the claim that the psychological evaluation was ordered simply out of animus and with the purpose of intimidation.

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