

# Appealing a Civil Service Exam Disqualification



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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**

### **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**

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)

## **What to Do**

First off, you need to remember that you have a limited time (only thirty 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.

More information on appealing a medical or psychological disqualification can be found [here](#).

The full Civil Service Commission appeal guidelines can be found [here](#).

## **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.

You can read the full New York State Civil Service Commission Appeal Guidelines [here](#).

You can also read a Summary of New York State Civil Service Law [here](#).

## **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 manner. 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.

[Read full article here.](#)

## **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.

[Read the full article here.](#)

**If you need a lawyer to represent you in your New York City or New York State civil service disqualification appeal, please call Kevin P. Sheerin toll free at 888-998-9984.**