

*In the Matter of Kenneth Krycicki, Sheriff's Officer (S9999D),
Salem County
DOP Docket No. 2005-2146
(Merit System Board, decided January 25, 2006)*

Kenneth Krycicki appeals his rejection as a Sheriff's Officer by Salem County and its request to remove his name from the eligible list for Sheriff's Officer (S9999D) on the basis of medical unfitness to perform effectively the duties of the position due to his failure to meet the visual acuity requirement.

The appeal was brought before the Medical Examiners Panel on November 9, 2005, which, on November 15, 2005, rendered the attached Report and Recommendation. Sheriff John B. Cooksey and Undersheriff Theodore D. Vengenock attended the meeting. Appellant did not attend the meeting. Exceptions were filed by appellant and cross-exceptions were filed by the appointing authority.

The Medical Examiners Panel's Report and Recommendation indicated that, among other things, appellant had lost his right eye vision in a childhood accident. An examination by Dr. John Amrien on December 21, 2004 revealed that appellant was blind in his right eye. An examination on March 3, 2005 by Dr. David Ringel, appellant's physician, indicated that appellant had a well-fitting prosthesis in the right orbit and experienced no depth perception. However, he was permitted to drive in New Jersey by using monocular clues to substitute for his depth perception deficit. Such prosthesis was also evidenced in Dr. Evamaria Eskin's medical examination on March 16, 2005. The Panel recommended that appellant be removed from the subject eligible list.

In his exceptions, appellant claims that an employer must produce factual or scientifically validated evidence indicating that employment of a disabled person would cause injury to that employee or others. *See N.J.S.A. 10:5-1, et seq.* He claims that he had not yet received any factual proof to validate the conclusions of the Medical Examiners Panel which stated that his visual impairment would cause a direct threat to himself or others or that his limitation would prevent him from performing the job of a Sheriff's Officer. In support, he cites *Greenwood v. State Police Training Center*, 127 N.J. 500 (1992), in which the Camden County Sheriff's Office had to allow the appellant, who had a visual impairment in one of his eyes, to attend the police training program to become a Sheriff's Officer.

In its cross-exceptions, the appointing authority, represented by David J. Puma, Esq., encloses a statement dated December 12, 2005 from Salem

County's Undersheriff Vengenock who reiterated concerns which were presented at the Medical Examiners Panel's meeting. Vengenock indicated that the Sheriff's Department has only 19 officers, who perform various police duties on a daily basis. Examples include foot chases, vehicle pursuits, and physically subduing inmates and suspects throughout the county. In answer to a question from one of the physicians on the Medical Examiners Panel, Vengenock indicated that, as a reasonable accommodation, a dispatching position is not possible because such position is not under the jurisdiction of the Sheriff's Department. Further, Vengenock stated that the department had no in-house, light duty assignments. Accordingly, Vengenock maintained that appellant's medical condition may be a liability both to himself and to other officers who work with him.

N.J.A.C. 4A:4-6.5 provides for the Merit System Board to utilize the expertise of a Medical Examiners Panel to make a report and recommendation on medical disqualification issues. The Panel is composed of medical professionals, all of whom are faculty and practitioners of the New Jersey Medical School (University of Medicine and Dentistry of New Jersey).

In this case, the Medical Examiners Panel's Chairman, Lawrence D. Budnick, MD, MPH, Director of Occupational Medicine Service and Associate Professor of Clinical Medicine, New Jersey Medical School (University of Medicine and Dentistry of New Jersey), requested a medical specialist to perform a chart review and to make findings and recommendations regarding appellant's medical fitness for the job in question. The specialist was board certified in internal medicine from the Medicine Department, New Jersey Medical School.

The Panel reviewed all medical reports submitted. Dr. Eskin, MD, MPH, FACOEM, board certified in Occupational Medicine, submitted a report dated March 16, 2005. Among other things, Dr. Eskin contended that, although fit for many occupations, "individuals with monocular vision are generally excluded from safety sensitive [emphasis in original] positions due to safety risks associated with lack of depth perception and deficits of peripheral vision." She claimed that the United States Department of Transportation Guidelines for Commercial Drivers' Licenses specify corrected visual acuity of 20/40 or better in each [emphasis in original] eye. See 49 *CFR* 391.41, Physical Qualifications for Drivers. In Great Britain and in Canada, the Transportation authorities exclude candidates with monocular vision. See Hartenbaum, *The DOT Medical Examination*, 2003 Occupational and Environmental Medicine Press. Dr. Eskin stated that the National Fire Protection Association medical standards exclude candidates with monocular vision. See Cox, Edwards & Palmer, *Fitness for Work* (2000). She claimed

that some states require that State Law Enforcement personnel standards have binocular vision.

Dr. Eskin noted that safety sensitive positions generally require binocular vision to safely perform certain sensitive tasks such as driving emergency vehicles, driving at high speeds, potentially firing a weapon in a chaotic crowd situation, searching for individuals under poor visibility conditions and running or climbing on uneven and unfamiliar terrain. See Gregory Good and Michael Taravella, *Vision standards in law enforcement*, Clinics in Occupational and Environmental Medicine: 3 (2003) 549-570. Dr. Eskin stated that appellant should not “participate in raids” or “perform patrol duties.” An additional concern was to “provide security at public functions where dignitaries may be present.”

Dr. Eskin suggested that, if a reasonable accommodation could be provided by employees with binocular vision, appellant could perform hazardous work. However, this question was addressed at the Panel meeting, wherein Sheriff Cooksey indicated that he had a complement of only 21 officers, all of whom must perform various duties.

A Med-Tox Health Services consulting report on conditional employment physical examinations indicates that monocular vision not only interferes with depth perception but also diminishes peripheral vision. Such diminution could lead to sudden incapacitation. For example, good peripheral vision picks up danger or safety in entering a 4-way intersection while driving through with emergency flashing equipment. Peripheral vision enhances police officer safety when approaching a group spread out to the left and right, looking for sudden movements to the extreme left and right. Good peripheral vision also enables an individual to see movements off to the side while conducting a building search. See <http://www.med-tox.com/poll.html>. Accessed December 7, 2005.

It is noted that in *Greenwood v. State Police Training Center, supra*, the Court indicated that an employee who had limited vision in one eye could not be dismissed by the Police Training Commission on the basis that injury to the other (good vision) eye would render him sightless. The Court held that an employer does not have good cause to terminate a public employee on the basis of a physical limitation unless there is substantial evidence that such limitation either prevents the employee from adequately performing his or her job or creates a substantial risk of serious injury to the employee or others. In addition, the Court declared that the dismissal lacked good cause because no substantial evidence indicated that the trainee would be unable to complete the police training program or that his disability would expose him to a greater risk of injury than that confronting other trainees. That case,

however, differs significantly from the subject case. Appellant is an eligible on a list and has no property right to the job. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Greenwood was already employed, while appellant merely has a possibility of employment, if he is not otherwise disqualified. *See N.J.S.A. 11A:4-8* and *N.J.A.C. 4A:4-4.8*. Further, in this case, there is sufficient medical evidence to justify the appellant's list disqualification. Dr. Eskin indicated that safety sensitive positions, such as the subject one, generally required a higher standard of visual acuity.

The report by the Medical Examiners Panel discusses all submitted evaluations. The Panel, with a reasonable degree of medical certainty, concluded that appellant had a significant visual impairment or functional limitation that would cause a direct threat to himself or to others in the job of a Sheriff's Officer.

Having considered the record and the Medical Examiners Panel's report and recommendation and the exceptions and cross-exceptions filed by the parties and having made an independent evaluation of same, the Merit System Board accepted and adopted the findings and conclusions as contained in the attached Medical Examiners Panel's report and recommendation and found that appellant failed to prove his claim that he is able to perform the essential duties of the job.

ORDER

The Merit System Board finds that the appointing authority has met its burden of proof that Kenneth Krycicki is medically unfit to perform effectively the duties of a Sheriff's Officer and, therefore, the Board orders that his name be removed from the subject eligible list.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.