

B-12



STATE OF NEW JERSEY

In the Matter of Debralu Bieniecki,
Manager 1, Vocational Rehabilitation
Services (PS4826N), Department of
Labor and Workforce Development

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-3917

Bypass Appeal

ISSUED: ~~MAR~~ 17 2017 (CSM)

Debralu Bieniecki appeals the bypass of her name on the Manager 1, Vocational Rehabilitation Services (PS4826N), Department of Labor and Workforce Development eligible list.

The appellant, a non-veteran, took the subject promotional examination, achieved a passing score, and was ranked #6 on the resultant eligible list. The appellant's name was certified to the appointing authority on February 16, 2016. In disposing of the certification on May 27, 2016, the appointing authority bypassed the appellant, who was listed in the second position on the PS160232 certification, and appointed the eligible in the third position, Maxine Becker, effective April 16, 2016.

On appeal to the Civil Service Commission (Commission), the appellant states that she was interviewed for the position on March 15, 2016 at 9:30 a.m., met with the interviewers, and was notified that one other candidate "will be interviewed" for the same position. Immediately after her interview, the appellant attended a Statewide meeting and asserts that the other candidate for the position was also at this meeting. During the meeting, the appellant claims that two of the four interview questions were discussed, and that the staff member who presented that information was also one of her interviewers. Additionally, another staff member gave a presentation that lasted more than one hour that was the subject of another interview question. Near the end of the meeting, the appellant asserts that the individual who was an interviewer that presented information during the meeting "escorted the other candidate out of the meeting to her interview" for the

subject position. The appellant states that she was advised by Human Resources on April 11, 2016 that the other candidate was chosen and that the deciding factor was the result of the interview questions. Therefore, the appellant argues that the other candidate was given an unfair advantage with her responses to the interview questions because she was exposed to them prior to her interview. The appellant maintains that she is more qualified for the position based on her score on the test, her experience and her education. As such, the appellant requests that she be appointed to the subject position.

In response, the appointing authority states that it appointed one of the top three eligibles on the certification in accordance with the Rule of Three. In this regard, it states that two candidates were interviewed for the position and both candidates performed well. However, Becker received a higher score as she presented the best evidence of ability to establish high quality partnerships and community involvement that would better "WIOA" expectations. Further, the appointing authority states that Becker was serving as the acting manager, so, there would be no disruption of the relationship with the community partners she had developed over the prior year. For these reasons, the appointing authority states it selected Becker.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. *N.J.A.C.* 4A:2-1.4(c), in conjunction with *N.J.A.C.* 4A:4-4.8(b)4, provides that the appellant has the burden of proof to show by a preponderance of evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper. As long as that discretion is properly utilized, an appointing authority's decision will not be overturned.

Initially, since the appellant, a non-veteran, was the second listed name on the certification, it was within the appointing authority's discretion to select any of the top three eligibles on the certification. The appointing authority indicated that it selected Becker, a lower-ranked eligible, because she was better suited for the position as she provided the best evidence of ability to establish high quality partnerships and community involvement that would better meet its expectations. It also stated that, since Becker had been serving as acting manager, there would be no disruption of the relationships with the community partners she developed over the prior years. Although the appellant claims that Becker received an unfair advantage, other than her mere allegations, she has not provided any evidence that Becker was exposed to the interview questions prior to her actual interview. Further, although provided the opportunity, she has not rebutted the appointing authority's explanation as to why Becker scored higher on the interview. *See In the*

Matter of William Ippolitto (CSC, decided June 26, 2013) (Since interviews are discretionary, lack of documentation or structure in the appellant's interview did not establish his bypass was improper as the hiring determination was made in compliance with Civil Service law and rules). The fact that a Statewide supervisors meeting may have touched on topics that were evaluated as part of the interview process does not establish, by itself, that Becker had an unfair advantage during the interview or that the appellant was bypassed for some invidious reason.

Additionally, the appellant does not possess a vested property interest in the position. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Other than her mere allegations, the appellant has not presented any substantive evidence regarding her bypass that would lead the Commission to conclude that the bypass was improper or an abuse of the appointing authority's discretion under the "rule of three." Moreover, the appointing authority presented legitimate reasons for the appellant's bypass which have not been persuasively refuted.

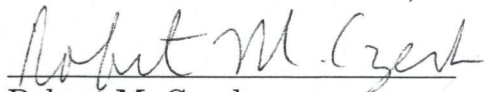
Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name was proper and the appellant has failed to meet her burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF MARCH, 2017



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