



STATE OF NEW JERSEY

In the Matter of Elizabeth Rojas,
Supervising Family Service Specialist
2 (PS5396K), Department of Children
and Families

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2021-636, *et. al.*

Bypass Appeals

ISSUED: JULY 2, 2021 (JET)

Elizabeth Rojas appeals the bypasses of her name on the Supervising Family Service Specialist 2 (PS5396K), Department of Children and Families, eligible list. Since these matters concern similar issues, they have been consolidated herein.

The appellant took the promotional examination for Supervising Family Service Specialist 2 (PS5396K), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on August 24, 2020 (PS200507 and PS200509), December 22, 2020 (PS200862), and on January 13, 2021 (PS210036 and PS210037). In disposing of the PS200507 certification, the appointing authority bypassed the appellant, who was the 9th ranked candidate in 3rd position on the certification, and recorded her as, "retained, interested others appointed." The appointing authority appointed Steven Cattelona, who was the 32nd ranked eligible in 4th position on the certification, effective October 24, 2020. In disposing of the PS200509 certification, the appointing authority bypassed the appellant, who was tied as the 9th ranked candidate in 2nd position on the certification, and recorded her as "retained, interested others appointed." The appointing authority appointed Jontue Wingate-Tyler, who was tied as the 9th ranked candidate in 3rd position on the certification, effective November 21, 2020, and Brandie Williams, who was the tied as the 60th ranked candidate in 14th position on the certification, effective November 21, 2020. In disposing of the PS200862 certification, the appointing authority bypassed the appellant, who was the 9th ranked candidate in 2nd position, and recorded her as "retained, interested others appointed." The appointing authority appointed Kim Grunstra, who was the 19th ranked eligible in 3rd position, effective March 13, 2021. In disposing of the PS210036 certification, the appointing authority bypassed the appellant, who was the 9th ranked eligible in 1st position on the

certification, and recorded her as “retained, interested others appointed.” The appointing authority appointed Latoyah Jones, who was the 32nd ranked eligible in 3rd position on the certification, effective March 27, 2021, Carol Pabon, who was tied as the 60th ranked candidate in the 7th position, effective March 27, 2021, Yvette Garner, who was tied as the 98th ranked candidate in the 17th position, effective March 27, 2021, Felice Taylor, who was tied as the 98th ranked candidate in the 21st position, effective March 27, 2021, and Mikael Williams, who was tied as the 98th ranked candidate in 22nd position, effective March 27, 2021. In disposing of the PS210037 certification, the appointing authority bypassed the appellant, who was the 25th ranked candidate in 6th position on the certification, and recorded her as “retained, interested others appointed.” The appointing authority appointed Eugene Adams, who was tied as the 75th ranked candidate in 12th position, effective March 27, 2021, and Starlena Waller, who was tied as the 75th ranked candidate in the 17th position, effective March 27, 2021.

On appeal to the Civil Service Commission (Commission), the appellant asserts that she possesses five years of applicable experience, as she previously served in the subject title. She states that she ranked as the first candidate on the PS210036 certification, and she possesses experience in the Intake, Permanency, Adolescence, and Litigation units, and she is bilingual. Moreover, the appellant explains that she possesses over 20 years of experience and she was rated as exceptional on her employee evaluation. In addition, the appellant explains that Pedro Cirino was appointed to the subject title, despite that she ranked higher than him and that he possesses a history of unprofessional behavior in the workplace.

In response, the appointing authority asserts that, with respect to the PS200507 certification, Cattelona and the appellant were interviewed by a panel, and Cattelona scored higher than the appellant based on his interview responses. As such, based on his answers at the time of the interview, the appointing authority appointed Cattelona as he was determined as the most qualified candidate in compliance with the Rule of Three. With regard to the PS200509 certification, the appointing authority explains that the appellant, Williams, and Wingate-Tyler were interviewed by a panel, and Williams and Wingate-Tyler scored higher than the appellant based on their interview responses. As such, based on their answers at the time of the interview, the appointing authority appointed Williams and Wingate-Tyler as they were determined as the most qualified candidates in compliance with the Rule of Three. With respect to the PS200862 certification, the appointing authority explains that the appellant and Grunstra were interviewed by a panel, and Grunstra scored higher than the appellant based on her interview responses. As such, based on her answers at the time of the interview, the appointing authority appointed Grunstra as she was determined as the most qualified candidate in compliance with the Rule of Three. With regard to the PS210036 certification, the appointing authority explains that the appellant, Jones, Pabon, Garner, Williams, and Taylor were interviewed by a panel, and the appointed candidates scored higher

than the appellant. As such, based on their answers during the interview process, the appointing authority appointed Jones, Pabon, Garner, Williams, and Taylor as they were determined as the most qualified candidates in compliance with the Rule of Three. With regard to the PS210037 certification, the appointing authority explains that the appellant, Waller, and Adams were interviewed by a panel, and Waller and Adams scored higher than the appellant based on their interview responses. As such, the appointing authority appointed Waller and Adams as they were determined as the most qualified candidates in compliance with the Rule of Three. In support, the appointing authority provides copies of the scoring sheets.

Additionally, the appointing authority asserts that, with respect to the appellant's arguments pertaining to Cintron, his name did not appear on any of the certifications that the appellant refers to in this matter. Rather, the appointing authority contends that Cintron's name appeared on the PS210051 certification and he was appointed effective April 10, 2021. As such, the appointing authority maintains that appellant's arguments pertaining to Cintron are not relevant to her appeal.

It is noted that a review of official personnel records confirms that Cintron's name does not appear on the PS200507, PS200509, PS200862, PS210036 and PS210037 certifications.

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 (known as the Rule of Three) allow an appointing authority to select any of the top three interested eligibles from a promotional list, provided that a veteran does not head the list. As long as that discretion is properly utilized, an appointing authority's discretion will not be overturned. *N.J.A.C. 4A:2-1.4(c)* provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper.

In this matter, the appellant has provided no substantial evidence to show that the bypasses were improper. Initially, the appellant has not provided any information to show that she is more qualified than any of the appointed candidates. Rather, she essentially states that she possesses a variety of experience, including experience in the Permanency Unit, Intake, Adolescent, and Litigation units. However, she has not established in any way that she is more qualified than the appointed candidates to be appointed to the subject title. It is within an appointing authority's discretion to choose its selection method, and the record indicates that the candidates were interviewed and the appointed candidates scored higher than the appellant. Based on their interview scores, the appointing authority then selected the candidates it determined were best suited for the position. As such, the appointing authority provided a legitimate basis for not selecting the appellant.

Consistent with *N.J.A.C. 4A:4-4.8(a)3*, an appointing authority has selection discretion under the “Rule of Three” to appoint a lower ranked eligible absent any unlawful motive. *See In the Matter of Michael Cervino* (MSB, decided June 9, 2004). *Compare, In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984) (Hearing granted for individual who alleged that bypass was due to anti-union animus); *Kiss v. Department of Community Affairs*, 171 *N.J. Super.* 193 (App. Div. 1979) (Individual who alleged that bypass was due to sex discrimination afforded a hearing). The Commission has reviewed this matter and does not find that the appellant was bypassed for an 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). Although the appellant contends that she possesses over 20 years of experience, that experience does not overcome that the appointed candidates scored higher during the interview process. While the appellant ranked higher on the certifications based on her examination score, that fact, by itself, is insufficient to establish that her bypass was improper given the discretion afforded an appointing authority under the Rule of Three. Moreover, the appellant’s arguments pertaining to Cintron are of no moment, as his name does not appear on any of the above listed certifications.

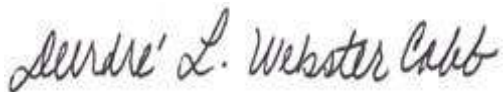
Accordingly, the appellant has not sustained her burden of proof in this matter.

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 30TH DAY OF JUNE, 2021



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c: Elizabeth Rojas (2021-636; 2021-637; 2021-1373; 2021-1387; 2021-1401)
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