



STATE OF NEW JERSEY

In the Matter of Charles Coleman, II,
Medical Security Officer Recruit
(S0939W), Ann Klein Forensic Center

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

CSC Docket No. 2022-1386

List Bypass Appeal

ISSUED: MARCH 4, 2022 (SLK)

Charles Coleman, II, appeals the bypass of his name on the Medical Security Officer Recruit (S0939W), Ann Klein Forensic Center eligible list.

By way of background, the appellant, a nonveteran, appeared on the S0939W eligible list, which promulgated on February 28, 2019 and expires on February 27, 2023. The appellant's name was certified on June 4, 2021 (OS210186) for a position in the subject title. Sixty-one names were certified, and the appellant was tied with others as the 181st ranked candidate. Thirteen candidates were appointed, including eight higher ranked candidates and five candidates who were ranked 181st. It is noted that the appellant is a former Building Maintenance Worker for Trenton Psychiatric Hospital (TPH). The appellant submitted a June 28, 2021, letter to TPH indicating that he was resigning from his position and giving two weeks' notice. Personnel records indicate that he resigned in good standing from this position on July 9, 2021.

On appeal, the appellant states that he accepted employment in the subject position and was going through the hiring process including being contacted to perform a background check, and set-up finger printing and a physical because the appointing authority was trying to set him up prior to the next orientation class. However, a Personnel Assistant 3 (PA3) for the appointing authority advised him that he was not going to be hired because he resigned from his former position with TPH. The appellant asserts that the PA3 advised him that his start date with the

appointing authority would have been August 16, 2021, and his last day of employment with TPH would have been August 13, 2021, if his transfer had been approved. However, the PA3 explained that since he resigned from TPH before he started working for the appointing authority, he would be a new hire. Subsequently, the appellant states that the PA3 informed him that the appointing authority was not going to hire him without any explanation. He indicates that the PA3 stated that she received a memo/history email from TPH and he asked her if this impacted his employment with the appointing authority. However, the PA3 refused to inform what was in the memo/history email. He reiterates that he has not received any information as to why he was not hired.

The appellant also submits documents including a June 24, 2021, email from the PA3 to the appellant indicating his interview would be on June 28, 2021, a July 13, 2021, email from the PA3 to the appellant where the subject was "Transfer Fingerprinting," and July 15, 2021, email communication where the PA3 states that it is important for the appellant to contact her immediately and the appellant later advised that TPH payroll indicated that the PA3 needed to contact it so that his resignation letter could be retracted and to see how the appointing authority was going to transfer him.

In response, the appointing authority states that the appellant submitted a letter of interest and he was contacted to set up an interview. It presents that the PA3 informed the appellant that if he was accepted for employment, it would process him as a transfer since he was a current employee with TPH. Therefore, he would not be given drug testing which is required for new hires for direct care positions, as this requirement did not apply for an employee transferring from one psychiatric hospital to another under the Department of Health. The appointing authority indicates that the appellant was interviewed on June 28, 2021, accepted as a potential candidate for a position in the subject title, and his pre-employment processing began. Thereafter, it states that the PA3 contacted him to begin the transfer process by having him schedule his finger printing appointment. However, the appointing authority indicates that at this time, the PA3 did not know that the appellant had resigned from his position with TPH. Further, once it was informed that the appellant had resigned, it asserts that he could no longer be processed as a transfer. Also, the appointing authority presents that he was now outside the window of the drug testing requirement, which was 72 hours from the initial offer of employment, which was given to him verbally during the interview process. Subsequently, the appointing authority states that the PA3 advised that the appellant should contact TPH to request that his resignation be rescinded. Additionally, it states that the PA3 contacted its Employee Relations Officer (ERO) to see if the appellant could be transferred and the ERO responded that the appointing authority would not be hiring the appellant. Further, after informing the appellant that he was not going to be hired and at the appellant's request, the PA3 contacted TPH which informed her that it was not allowing the appellant to rescind his letter of resignation. Consequently,

as the appointing authority needed to shortly return the certification, it decided to bypass him. The appointing authority notes that the appellant remains on the list and will be considered for future employment where he will be given the opportunity to meet all necessary pre-employment steps including the mandatory drug screen, background reference check, and fingerprint processing.

In reply, the appellant submits an August 19, 2021, recorded phone call between himself and the PA3 which he purports as evidence that he was discriminated and retaliated against.

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)3i allow an appointing authority to select any of the top three interested eligibles on an open competitive or promotional list provided no veteran heads the list. Additionally, *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 from an eligible list was improper.

Regarding the merits, in cases of this nature, where dual motives are asserted for an employer's actions, an analysis of the competing justifications to ascertain the actual reason underlying the action is warranted. *See Jamison v. Rockaway Township Board of Education*, 242 *N.J. Super.* 436 (App. Div. 1990). In *Jamison, supra* at 445, the Court outlined the burden of proof necessary to establish discriminatory and/or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination or retaliation by a preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-discriminatory or non-retaliatory reason for the decision.

If the employer produces evidence to meet its burden, the complainant may still prevail if he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she has established a presumption of discriminatory or retaliatory intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the motive.

In the instant matter, it was within the appointing authority's discretion to select any of the top three interested eligibles for each appointment. Nevertheless, the appellant alleges that the appointing authority initially informed him that he was going to be hired and then discriminated and retaliated against him by not hiring him. However, while the appellant believes that he deserves to be appointed, consistent with *N.J.A.C.* 4A:4-4.8(a)3, the appointing authority had selection discretion under the "Rule of Three" to appoint a lower or same ranked eligible absent

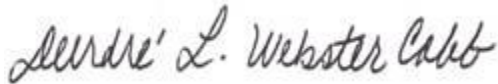
any unlawful motive. *See In the Matter of Michael Cervino* (MSB, decided June 9, 2004). In this case, the appointing authority presents lawful reasons for the appellant's bypass. Specifically, it presents that the appellant was bypassed because it advised him that he was going to be transferred from his position with TPH, which would avoid the need for a drug screen. However, once the appellant resigned from his position, it no longer had this option as TPH refused to rescind his letter of resignation.¹ It also states that it no longer had the option of processing the appellant as a new hire because by the time it learned of his resignation, the appellant was outside the 72-hour window from the initial offer of employment where a new hire needed to be drug tested. Therefore, the appointing authority has presented a legitimate business reason for the appellant's bypass. Further, while the appellant claims that the appointing authority "discriminated" against him, under Civil Service law and rules, discrimination is derogatory treatment based on one's membership in a protected class. However, the appellant has not made such a claim or provided any evidence to support such a claim. Further, there is no evidence to support a claim of retaliation as there is no evidence that the appointing authority acted with invidious motivation or in an illegal manner. Accordingly, the appellant failed to meet his burden of proof. It is noted that since the appellant remains on the subject eligible list, his name could potentially be certified prior to the expiration of the list and his employment could potentially be processed as a new hire at that time.

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 2ND DAY OF MARCH, 2022



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

¹ Per *N.J.A.C. 4A:2-1.6*, TPH was under no obligation to rescind the resignation.

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