



STATE OF NEW JERSEY

In the Matter of Brendan Murphy,
Police Officer (S9999M), Morristown

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-1585

Bypass Appeal

ISSUED: SEP 22 2014 (JET)

Brendan Murphy appeals the bypass of his name on the Police Officer (S9999M), Morristown eligible list.

The appellant, a non-veteran, took the open competitive examination for Police Officer (S9999M), achieved a passing score, and was ranked on the subsequent resident eligible list. The appellant's name was certified to the appointing authority on May 6, 2013. In disposing of the certification, the appointing authority bypassed the appellant, who was the number one ranked eligible on the OL30686 certification, and appointed Collin J. Birch, a veteran and the seventh ranked eligible¹ on the certification, effective July 15, 2013, and Christopher J. Little, a veteran and the eleventh ranked eligible on the certification, effective July 15, 2013. Birch and Little were listed on the Morris County sub-list. The eligible in the second position was bypassed and the eligibles in the third through sixth and eighth through tenth positions were removed from the list for various reasons. The appellant appealed the matter of his bypass to the Division of Classification and Personnel Management (CPM) arguing that the appointing authority improperly bypassed his name in favor of a lower ranked candidate. CPM determined that the appointing authority disposed of the certification in accordance with the Rule of Three.

¹ After the third, fourth, fifth, and sixth candidates were removed from the eligible list, Birch became the third ranked eligible.

On appeal, the appellant asserts that he should have been appointed to the subject position since he was ranked first on the eligible list. Further, the appellant contends that he satisfied all of the requirements for appointment as a Police Officer, including being a resident of Morristown. Moreover, the appellant states that the appointed candidates were not residents of Morristown and the appointing authority appointed them in violation of the Rule of Three.

In response, the appointing authority, represented by Jennifer Roselle, Esq., maintains that the appellant was properly bypassed. Specifically, the appointing authority asserts that it is permitted to consider the candidates' qualifications in order to select the best suited candidate from among the top three eligibles on the list. Moreover, the appointing authority states that the appellant has not presented any evidence to show that it abused its discretion in appointing Birch and Little under the Rule of Three. In this regard, it explains that Birch and Little were the best candidates to meet its needs at that time of their appointments. The appointing authority adds that it contacted the eligibles' employment references and it was determined that Birch and Little had a better ability to understand, follow, and act on directives without constant supervision, which is imperative to the proper functioning of the Police Department. Thus, the appointing authority avers it properly bypassed the appellant.

Moreover, the appointing authority maintains that its residency requirements were not violated. In this regard, the appointing authority explains that recruitment is open to individuals other than those with an established residency within Morristown. The appointing authority adds that it has promulgated general residency requirements for its employees. Specifically, the ordinance provides that "where, in the opinion of the business administrator, there cannot be recruited a sufficient number of qualified Town residents for specific positions, the Town shall advertise for other qualified applicants. (Morristown Ordinance No. O-45-89). The appointing authority states that, although the ordinances do not grant an "in-town" preference to the candidates, Morris County residents are given preference over candidates from other jurisdictions.

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, provided that disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list. As long as that discretion is properly utilized, an appointing authority's decision will not be overturned.

Initially, since the appellant, a non-veteran, headed the certification, it was within the appointing authority's discretion to select any of the top three eligibles remaining on the certification. The appellant, the first-ranked eligible, was

bypassed on the May 6, 2013 certification of the eligible list in favor of the eligibles ranked seventh and eleventh. The appointing authority indicated that it selected lower-ranked eligibles because they were better qualified. The appellant challenges the appointing authority's proffered reasons, and asserts, among other things, that the appointments of the other two candidates instead of himself violated the Rule of Three. A review of the record reveals that the appellant has failed to meet his burden of proof in this matter. The appellant has not shown any evidence that the decision to bypass his name was improper. The appointing authority has provided a specific reason for bypassing his name for appointment, namely, that the appointed candidates interviewed well and their reference checks revealed that they had a better ability to follow directives without constant supervision. In addition, the appellant did not provide any substantive evidence to show that he is more qualified than the appointed candidates. The factors cited by the appointing authority provide a sufficient reason for not appointing the appellant from the subject certification in favor of the two lower-ranked eligibles. Moreover, the appointing authority properly interviewed the appellant and considered his application. Thus, other than the appellant's allegations, he has not provided any substantive evidence to show that there was a violation of the Rule of Three.

Indeed, the Commission finds that the appointing authority disposed of the certification in accordance with the "Rule of Three." See *N.J.A.C. 4A:4-4.8(a)3*. The Commission notes that an appointing authority has discretion under the Rule of Three to appoint a lower-ranked eligible absent any unlawful motive. 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). Even assuming, *arguendo*, that the appellant is more qualified for the position at issue than Birch and Little, the appointing authority still has selection discretion under the "Rule of Three," absent any unlawful motive. In reviewing this matter, the Commission has not found that the appellant's bypass was due to invidious reasons. It is noted that 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 his mere allegations, the appellant has not presented any substantive evidence regarding his 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.

In regard to the appellant's arguments that Birch and Little should not have been appointed since it was a violation of the residency policy, the appointing authority's residency ordinance specifically permits it to make non-resident

appointments when there are an insufficient number of resident eligibles on the list. The ordinance does not mandate that all resident eligibles who are on a list be appointed even if it is determined that a reachable non-resident applicant is better suited for the position. In this case, the two resident applicants were properly bypassed in favor of two reachable county residents who were determined better suited for the positions. Other than his mere assertions, the appellant has provided no evidence that the appointing authority misapplied its residency ordinance. Moreover, the ordinance and its application in this case are fully consistent with the governing statute and rule. *See N.J.S.A. 40A:14-123.1a and N.J.A.C. 4A:4-3.2(a).* Therefore, the appellant's assertions are unfounded and unsupported in the record.

Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the May 6, 2013 certification of the Police Officer (S9999M), Morristown, eligible list was proper and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that the 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 17th DAY OF SEPTEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

**c: Brendan Murphy
 Jennifer Roselle, Esq.
 Michael F. Rogers
 Kenneth Connolly**

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BY CSC/CPM



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Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

November 22, 2013

Mr. Brendan E Murphy

Title: Police Officer
Symbol: S9999M
Jurisdiction: Morristown
Certification Number: OL130686
Certification Date: 5/16/13

Initial Determination:-- Bypassed

This is in response to your correspondence contesting the bypass of your name on the referenced certification list.

The Appointing Authority disposed of the referenced certification indicating the selection of a lower ranked eligible, and bypassed your name in accordance with N.J.A.C.4A: 4-4.8, which permits an appointing authority to make an appointment, from among the three highest ranked eligibles, according to the (Rule of Three). This rule is subject to the statutes governing veteran's preference when applicable.

It should be noted that effective May 7, 2012, a portion of N.J.A.C.4A:4-4.8 was repealed and the Appointing Authority is no longer required to provide a statement of reason when a lower or tied rank appointee is selected.

After a thorough review of our records and all the relevant material submitted, we find that no Merit System Rules were violated in disposing of the certification. Therefore, the Appointing Authority's decision to bypass your name has been sustained and your appeal is denied. Please be advised that your name remains active on symbol S9999M, and will be considered for future certifications until this list expires. The eligible list expires on December 9, 2013.

Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs within 20 days of the receipt of this letter. You must submit all proofs, arguments, and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with

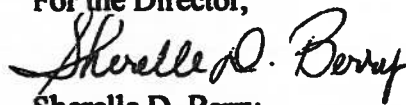
Brendan E. Murphy
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established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,

For the Director,

A handwritten signature in cursive script, reading "Sherelle D. Berry".

Sherelle D. Berry

Human Resource Consultant 2

c: AA

