

B-17



STATE OF NEW JERSEY

In the Matter of Donald Ingrasselino,
Deputy County Emergency
Management Coordinator (C0641R),
Bergen County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-93

Bypass Appeal

ISSUED: APR 07 2015 (JET)

Donald Ingrasselino appeals the bypass of his name on the Deputy County Emergency Management Coordinator (C0641R), Bergen County eligible list.

The appellant, a resident of Bergen County, took the open competitive examination for Deputy County Emergency Management Coordinator (C0641R), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on December 16, 2013. In disposing of the certification, the appointing authority bypassed the appellant, who was tied as the number one ranked eligible¹ in the second position on the OL131642 certification, and appointed Thomas Metzler,² a resident of Passaic County, who was tied as the fourth ranked eligible in the fifth position on the certification, effective January 21, 2014.³ Metzler was listed on the Passaic County sub-list.⁴ The eligible in the first position was bypassed and the eligibles in the third and fourth positions were removed from the list for various reasons.

¹ Jason Durie and Matthew Ziemkiewicz also tied as the number one ranked eligible. Durie and Ziemkiewicz are Bergen County residents. The appointing authority bypassed Durie. Ziemkiewicz was not interested in an appointment.

² Anthony LaManna also tied as the number four ranked eligible on the certification and his name was removed from the list as he did not complete pre-employment processing.

³ Metzler was placed in the third position since Durie was bypassed, Ziemkiewicz was not interested in an appointment, and LaManna was removed from the eligible list.

⁴ The announcement was open to residents of Bergen County; Essex County; Hudson County; and Passaic County. Metzler is a resident of Passaic County.

By way of a letter dated January 21, 2014, the appointing authority notified the appellant that he was not selected for the position and another candidate was appointed. The appellant appealed the matter of his bypass to the former Division of Classification and Personnel Management (CPM)⁵. CPM determined that the candidate was properly appointed in accordance with the Rule of Three.

On appeal, the appellant asserts that the appointing authority inappropriately bypassed him in favor of a lower ranked, less qualified candidate in violation of the Rule of Three. Further, the appellant states that he was bypassed in favor of a non-resident candidate who appeared on the Passaic County "sub-list." Specifically, the appellant explains that the subject position was announced open to Bergen County residents first and those candidates should have received absolute hiring preference pursuant to a local residency ordinance. In this regard, he asserts that applicants from Bergen County should have been appointed before any appointments were made from the Passaic County sub-list. As such, the appellant maintains that he should have been appointed since his name appeared on the list for Bergen County. Moreover, the appellant asserts that the appointment of a candidate from the Passaic County sub-list rather than a candidate from the Bergen list is a violation of *N.J.S.A. 11A:4-9* and *N.J.S.A. 40A:14-122* which apply to local residency ordinances and their application.

In response, the appointing authority maintains that the appellant's name was properly bypassed. Specifically, the appointing authority explains that it had the option "at the discretion of management" to appoint Metzler since he was one of the top three candidates on the December 16, 2013 certification and no veteran headed the list.

In response, the appellant asserts that the appointing authority acknowledges that its appointment was made solely at its discretion without regard to the candidates' qualifications. Moreover, the appellant reiterates that he should have been appointed due to his residency in Bergen County and he was improperly bypassed.

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 discretion will not be overturned. *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 the evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper.

⁵ Now the Division of Agency Services.

Initially, the appellant has not provided any evidence on appeal to show that a local residency ordinance was in effect at the time of the appointment mandating that all resident eligibles of Bergen County who are on a list should be appointed even if it is determined that a reachable, non-resident applicant is better suited for the position. Since he does not present evidence of a local residency ordinance in support of his claims, he has not met his burden of proof in this matter. Evidence of a misapplication of a residency ordinance is required in order to show that a candidate was improperly bypassed due to the appointment of a non-resident candidate. See *In the Matter of Thakur Persaud, Health Officer (M0040N), Paterson* (CSC, decided October 22, 2014). Further, *N.J.S.A. 40A:14-122* pertains to general qualifications and residency criteria for appointments made to be a member of a *municipal* police department, *not* a county local government unit. Other than his mere assertions, the appellant has not shown the misapplication of a county residency ordinance. Rather, the eligibles were properly divided into sub-lists pursuant to *N.J.A.C. 4A:4-3.2*. In disposing of the certification, two Bergen County residents were bypassed, one was not interested in an appointment and a Passaic County resident was removed from the list. Therefore, Metzler would be the third reachable eligible on the certification. As such, the appellant has not shown that the appointment of the candidate from Passaic County was inconsistent with the Rule of Three.

Additionally, 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 in favor of the eligible who ranked fourth, but was properly deemed to be the third *interested* eligible on the certification. The appointing authority indicated that it selected the lower-ranked eligible because he was better qualified. The appellant has not shown any evidence that the decision to bypass his name was improper. Other than his assertions, the appellant did not provide any substantive evidence to show that he is more qualified than the appointed candidate. The factors cited by the appointing authority provide a sufficient reason for not appointing the appellant from the subject certification in favor of the lower-ranked eligible. 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 Metzler, the appointing authority still has selection discretion under the "Rule of Three," absent any unlawful motive. In this regard, 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."

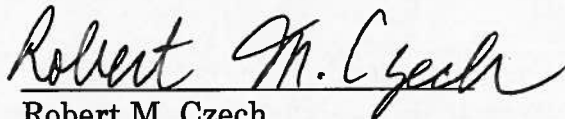
Accordingly, the appellant has failed to meet his burden of proof in this matter.

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 1st DAY OF APRIL, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Merit System Practices
& Labor Relations
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Donald Ingrasselino
Ralph Kornfeld
Kenneth Connolly



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

Chris Christie
Governor
Kim Guadagno
Lt. Governor

June 17, 2014

Don Ingrasselino

Title: Dpty Cnty Emerg Mgmt
Symbol: C0641R
Jurisdiction: Bergen Co
Certification Number: OL131642
Certification Date: 12/16/13

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 or an eligible in the same rank, 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) and will be considered for future certifications until this list expires. The eligible list expires on. Please note that symbol, expired on (date), and there will be no further certifications issued from this list.

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

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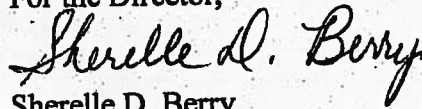
www.state.nj.us/csc

Don Ingrasselino
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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,



Sherelle D. Berry
Human Resource Consultant 2

c: AA