

B-16



STATE OF NEW JERSEY

In the Matter of William R.
Thompson, County Correction
Captain (PC2535T), Ocean County

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

CSC Docket No. 2017-3530

Bypass Appeal

ISSUED: NOV 16 2017 (JET)

William R. Thompson appeals the bypass of his name on the County Correction Captain (PC2535T), Ocean County eligible list.

The appellant, a resident of Ocean County, took the promotional examination for County Correction Captain (PC2535T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on November 30, 2016 (PL161438). In disposing of the certification, the appointing authority bypassed the appellant, who was the number one ranked eligible on the certification, and recorded him as "retained, interested others appointed." The appointing authority appointed Theresa Wallace, a resident of Ocean County, who was the second ranked eligible, and Eric Zentzis, a resident of Ocean County, who was the third ranked eligible, from the certification effective April 20, 2017. It is noted that the appellant filed a grievance after receiving notice from the appointing authority that he was not selected for the subject position, which was subsequently denied.

On appeal, the appellant asserts that the appointing authority inappropriately bypassed him in favor of lower ranked, less qualified candidates in violation of the Rule of Three. Additionally, the appellant contends that the appointing authority has not provided a legitimate reason for bypassing him on the subject list. Further, the appellant states that the appointing authority violated its own residency requirement since Zentzis is not a resident of Ocean County. The appellant adds that Zentzis should not have been determined as eligible for the civil service examination for the subject title since he did not meet residency

requirements.¹ In addition, the appellant argues that the appointing authority improperly bypassed him as a result of his participation in various union activities, as he is a former President and continues to be a member of the Police Benevolent Association (PBA).² The appellant adds that he was the most qualified candidate, and as such, he should have been selected for appointment. He explains that he scored highest on the examination for the subject position by a large margin. In this regard, his score was more than four points higher than the next lower ranked candidate's score on the November 30, 2016 certification. The appellant states that, although he possesses the least amount of seniority, his examination score is significant since he scored higher than the other candidates. He adds that his employee evaluations are excellent. The appellant argues that, although he was not provided with the same training opportunities that Wallace and Zentzis had received, he possesses knowledge and experience that exceeds the qualifications and experience of the other candidates. Moreover, the appellant asserts that he possesses a Juris Doctorate degree, which combined with his experience, shows that he is more qualified than the other candidates.

In response, the appointing authority maintains that the appellant's name was properly bypassed. Initially, the appointing authority states that the appellant grieved his bypass, and, after being thoroughly considered, it was denied, and not advanced to binding arbitration, therefore settling in favor of the employer. With respect to the selection process, the appointing authority explains that the Warden appropriately considered the candidates' background and experience, and it maintains that Wallace and Zentzis were properly appointed. As such, the appointing authority states that the November 30, 2016 certification was properly disposed of pursuant to *N.J.A.C. 4A:4-4.8*. In support, the appointing authority provides a memorandum from Sandra J. Mueller, Warden, dated July 12, 2017, indicating that she conducted oral interviews with the candidates, and each candidate was asked identical questions and provided with the opportunity to respond. The memorandum states that the Warden and Deputy Warden ranked the candidates, and the two candidates who were best suited for the position were appointed. Moreover, the appointing authority maintains that Zentzis is a resident of Ocean County. However, it acknowledges that he was a temporary resident of Atlantic County for an unspecified time frame while on an unpaid medical leave. No further details are provided.

In response, the appellant asserts, among other things, that the appointing authority acknowledges that the appointments were made solely at its discretion without regard to his qualifications. The appellant contends that the appointing

¹ It is noted that residency is **not** a requirement for eligibility to promotional examinations per Civil Service law and rules. However, if an appointing authority requires an individual to maintain residency as a condition of employment, violation of that requirement may be grounds for disciplinary or other remedial action.

² The appellant notes that he was President of PBA #258A.

authority did not address his arguments presented in this matter that his qualifications surpass those of the other candidates. Rather, he argues that the appointing authority merely submits boiler plate language in response to his appeal. Moreover, the appellant states that the appointing authority did not provide any documentation to show that Zentzis is a resident of Ocean County. In support, he provides a copy of the appointing authority's employee handbook to show that it maintains a residency requirement. He also provides various documentation, including voter registration records, to show that Zentzis lives in Atlantic County.

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 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 actions is warranted. See *Jamison v. Rockaway Township Board of Education*, 242 *N.J. Super.* 436 (App. Div. 1990). In *Jamison*, *supra* at 436, 445, the Court outlined the burden of proof necessary to establish discriminatory and retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish retaliation by a preponderance of the evidence. Once a *prima facie* case showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-retaliatory reason for the decision. For the reasons set forth below, the appellant has not presented a *prima facie* in this matter.

The appellant contends that he is more qualified than the lower-ranked candidates on the subject list and that he was bypassed for his participation in various union activities. However, the appellant does not rebut the assertion that his grievance, which contained allegations regarding his purported union activities, was resolved in the appointing authority's favor and that he did not pursue the matter to binding arbitration. Moreover, the appointing authority provided a legitimate basis for not selecting the appellant based on its oral interviews, which asked each candidate identical questions, and a comprehensive review of each candidates' personnel file by the Warden and Deputy Warden. In this regard, it is within an appointing authority's discretion to choose its selection method.

Appointing authorities are permitted to develop and utilize objective standards in order to determine how to use that discretion. The use of a panel of interviewers familiar with the position and the assignment of numerical scores in a number of categories related to the position is a permissible way for the appointing authority to make a hiring decision, so long as that hiring decision is in compliance with *N.J.A.C. 4A:4-4.8(a)3*. See *In the Matter of Paul Mikolas* (MSB, decided August 11, 2004) (Structured interview utilized by appointing authority that resulted in the bypass of a higher ranked eligible was not in violation of the Rule of Three). In this matter, the appointing authority conducted oral interviews with the candidates, and each candidate was asked identical questions and provided with the opportunity to respond. The record indicates that the candidates were ranked and the appointing authority then selected the two candidates it determined were best suited for the position. While the appellant may disagree with this methodology, he has not established that it was improperly implemented or that his non-selection via this process was for an improper or impermissible reason.

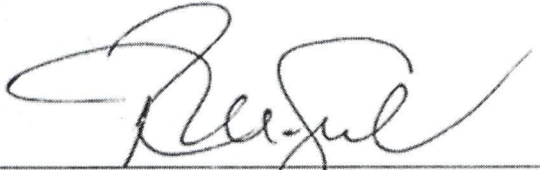
Moreover, while the appellant contends he has greater education than the lower-ranked appointees, he has not established in any way that such education makes him more qualified to serve as a County Correction Captain. The mere possession of advanced education credentials is insufficient evidence that the appointing authority's selection discretion was abused without showing a direct nexus between the credentials and the position in question. Additionally, while the appellant ranked higher on the eligible list based on his examination score, that fact, by itself, is insufficient to establish that his bypass was improper given the discretion afforded an appointing authority under the Rule of Three. Further, the appellant acknowledges that he possesses less seniority than the lower-ranked appointees. Finally, the appellant's contention regarding residency is unpersuasive. Initially, it is noted that residency is **not** an eligibility requirement for promotional examinations. See *N.J.A.C. 4A:4-2.6*. However, local and county appointing authorities **may** have residency requirements as a condition of continued employment. In this case, while the appellant has presented a portion of the appointing authority's employee handbook showing such a requirement, the appointing authority has indicated that Zentzis' residency outside of Ocean County was temporary and indicates that he is a current resident of Ocean County. Accordingly, the appellant has not sustained 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 15th DAY OF NOVEMBER, 2017



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