



**STATE OF NEW JERSEY**

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

In the Matter of Melissa Brown,  
State Park Police Lieutenant  
(PS2442G), Department of  
Environmental Protection

CSC Docket No. 2018-1746

List Bypass Appeal

**ISSUED: OCTOBER 3, 2018 (WR)**

Melissa Brown, a Sergeant with the New Jersey State Park Police, appeals the bypass of her name on the State Park Police Lieutenant (PS2442G), Department of Environmental Protection (DEP) eligible list.

The appellant, a non-veteran, appeared on the subject eligible list, which promulgated on February 16, 2017 and expires on February 15, 2020. The eligible list was certified (PS170472) to the appointing authority on March 22, 2017 with five names. The appellant appeared as the first-ranked eligible on the certification, but was bypassed in favor of the third-ranked eligible, George Fedorczyk, who was appointed effective May 13, 2017.<sup>1</sup> Thereafter, a second certification (PS171485) containing the names of six individuals was issued on September 7, 2017, with the appellant as the first-ranked eligible. In disposing of the certification, the appointing authority appointed the second-ranked eligible, Thomas Norton, effective November 25, 2017.

On appeal to the Civil Service Commission (Commission), the appellant claims that during her interview in April 2017, the Chief of State Park Police Terri Genardi informed her that she would have to surrender her K9 partner if she was appointed to the subject position. The appellant retorted that DEP has no formal policy which would require her to do that and insisted that she "should be able to continue to work [with her] dog for the department." Subsequently, the appellant

<sup>1</sup> Agency records indicate that the appellant did not appeal her bypass on the PS171485 certification.

states that she was bypassed on the PS170472 certification.<sup>2</sup> The appellant observes that she has received commendations for her service, the highest ratings on her performance reviews and has never been disciplined. Accordingly, the appellant complains that the appointing authority has not presented her with a satisfactory explanation for her bypass.

In response, the appointing authority indicates that the top three eligibles were all categorized as having “good” interviews.<sup>3</sup> It claims that although the appellant satisfactorily answered the formal interview questions, her answer to a “follow up question regarding a creative solution to a coverage shortage” was unsatisfactory. The appointing authority indicates that the appellant’s response was to use overtime, and when it was pointed out this would exhaust the overtime budget, the appellant had no response.<sup>4</sup> The appointing authority also claims that Norton, the selected candidate, provided more suitable responses that were preferred by the panel. Moreover, the appointing authority contends that the appellant was not appointed because she displayed “inappropriate behavior towards the end of the interview” when Genardi informed the appellant that K9 responsibilities were not part of the job duties and responsibilities of the subject position. In support of its position, the appointing authority submits a list of interview questions asked to all candidates and a summary of interviewee performance, and statements from Genardi, Karen Funari, Assistant Commissioner Representative and Barbara Doose, Human Resource Representative concerning the appellant’s interview.

In response, the appellant complains that the appointing authority failed to supply its interview notes and claims that “without notes they can fabricate information.” The appellant denies acting inappropriately near the end of the interview and explains that she was simply trying to point out that DEP has no policy against a State Park Police Lieutenant having a K9 partner. The appellant also disputes that she did not have a response to a follow up question regarding coverage. In this regard, she claims that she does not recall being asked about staffing shortages. The appellant challenges the appointing authority’s claim that the appointed candidate had more preferable answers to questions in the interview by observing that she and Norton were equally ranked as having “good” interviews. The appellant finally claims that the reason she was bypassed was not due to her actions “but rather due to improper motives and actions” by her superiors.

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<sup>2</sup> In October 2017, the appellant was offered to interview for an appointment from the PS171485 certification, but instead chose to rely on her April 2017 interview.

<sup>3</sup> It is noted that all of the top three ranked eligibles relied on their April 2017 interview for consideration of appointment from the PS171485 certification.

<sup>4</sup> The appointing authority indicates that the answers offered by the other candidates, using a directed patrol and seeking assistance, from another agency were better responses.

## 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 allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. At the time of disposition of the certification, *N.J.A.C.* 4A:4-4.8 no longer required that an appointing authority must, when bypassing a higher ranked eligible, give a statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tie score.<sup>5</sup> *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.

A review of the record regarding the PS171485 certification indicates that the appellant has failed to meet her burden of proof. The appellant has not shown by a preponderance of the evidence that the decision to bypass her name or not appoint her to the subject position was improper. The appointing authority, in response to the appellant's appeal, has provided specific reasons for bypassing her name for appointment, namely, that the appellant did not provide a satisfactory answer concerning a hypothetical coverage shortage and her unprofessional conduct towards the end of the interview regarding the issue of retaining her K9 partner if she were appointed to the subject position. Even assuming, *arguendo*, that the appellant acting professionally in asserting that there is no DEP policy against a State Park Police Lieutenant having a K9 partner and the appointing authority bypassed her name because she refused to relinquish her K9 partner, a disagreement between the duties of a position is not an illegitimate reason to bypass an eligible on an eligible list. Consequently, there is nothing in the record to indicate that the appellant's non-selection was based on an 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). Moreover, apart from her mere assertion, the appellant has not submitted any evidence whatsoever to support her claim that her superiors' "improper motives and actions" caused her bypass, nor does she even explain what those "improper motives and actions" were. Further, 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). Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the State Park Police Lieutenant (PS2442G), Department of Environmental Protection,

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<sup>5</sup> The rule amendment became effective on May 7, 2012, upon publication in the *New Jersey Register*.

eligible list, was proper and the appellant has failed to meet 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 3rd DAY OF OCTOBER, 2018



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