

CONCLUSION

N.J.A.C. 4A:2-1.1(b) states that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

N.J.A.C. 4A:4-4.8(c), states, in pertinent part, that upon receipt of the certification, an appointing authority shall appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, and shall notify the Commission (of the disposition of the certification by the disposition due date.

Initially, the appellant was aware that she was bypassed as early as September 2017 when she filed her grievance with the appointing authority, but she did not file her appeal with the Commission until May 11, 2018. Bypass matters are not subject to the grievance process and must be filed in accordance with *N.J.A.C.* 4A:2-1.1. The responsibility to file a timely appeal rests solely with the appellant. Further, the filing of an appeal in a different forum does not toll the time to file an appeal with the Commission. Therefore, the appellant's appeal of her July 22, 2017 bypass to the Commission on May 11, 2018 is well beyond the 20-day time frame, is untimely, and is dismissed solely on those grounds.

Moreover, even if the appellant filed a timely appeal, she has not made any arguments that the appointing authority's decision to bypass her was not in compliance with *N.J.A.C.* 4A:4 4.8(c). In this regard, *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 evidence that an appointing authority's decision to bypass the appellant on a list was improper. If discretion is properly utilized, an appointing authority's decision will not be overturned. 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. While the appellant may feel that she is the superior candidate and the appointing authority's selection was subjective, the appellant has not submitted any substantive evidence regarding her 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, a thorough review of the record indicates that the appellant has failed to demonstrate entitlement to relief.

ORDER

Therefore, it is ordered that this appeal be dismissed as untimely.

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 AUGUST, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Bernice Lagana
Mirella Bednar
Kelly Glenn
Records Center