

STATE OF NEW JERSEY

In the Matter of Bernice Lagana, Administrative Assistant 2 (PS4564P), Department of Law and Public Safety CSC Docket No. 2018-3615	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION Administrative Appeal		
	ISSUED:	August 20, 2018	(RE)

Bernice Lagana appeals the bypass of her name on the Administrative Assistant 2 (PS4564P), Department of Law and Public Safety eligible list.

The appellant, a non-veteran, ranked first on the eligible list, produced by an unassembled examination. The list was certified on July 13, 2017 (PS171207) with two names, and the second ranking candidate was appointed, effective July 22, The appellant filed a non-contractual grievance with the appointing 2017.authority in September 2017, and it was denied in October 2017 based on untimeliness. In the step one decision of the grievance, the appointing authority indicated that the appointment process was in accord with Civil Service rules and explained the process and its actions to the appellant. The appellant requested that her grievance proceed to step two and a hearing with the appointing authority, was held on March 1, 2018. Step two determined that the appointing authority did not violate Civil Service rules, in particular the "Rule of 3." See N.J.A.C. 4A:4-It found that the appellant alleged without proof that the favoritism was 4.8(a). involved, and that the difference in the scores on the examination were negligible (1.86 points). It found no non-contractual violation and sustained the bypass.

On appeal to the Civil Service Commission (Commission), the appellant provided a copy of the file, without the mentioned attachments, but submitted no substantive arguments. She simply requested a review of the matter.

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

derrare' L. Webster Cabb

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