



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Monica Miller,
Department of Corrections

Administrative Appeal

CSC Docket No. 2019-1211

ISSUED: APRIL 22, 2019 (SLK)

Monica Miller, a former Correctional Police Sergeant¹ with Northern State Prison, represented by Luretha M. Stribling, Esq, requests to receive a retroactive appointment as a Correctional Police Lieutenant (Lieutenant).

By way of background, in July 2013, Ms. Miller was charged with insubordination and received a 90-day suspension. Thereafter, after a hearing at the Office of Administrative Law (OAL), in *In the Matter of Monica Miller* (CSC, decided December 7, 2016), the Civil Service Commission (Commission) reversed the suspension and granted Miller 90 days back pay, benefits, and seniority.

In her request, Miller presents that during the time she was charged with insubordination, she was on the eligible list for Lieutenant (PS60272I). Further, she submits documentation to demonstrate that while her discipline proceedings were pending, she received several notices of certification for positions as a Lieutenant at different correctional facilities. Miller asserts that candidates are promoted based on their rank. However, she presents a candidate who was promoted to Lieutenant instead of her because of her pending disciplinary action, despite that candidate having a lower ranking. Therefore, Miller argues that if she had not been charged with insubordination, which was reversed, she would have been promoted to Lieutenant. Consequently, she is seeking a retroactive appointment as Lieutenant so that she can retire at the level of Lieutenant's pay.

¹ Personnel records indicate that Miller's retirement was effective January 31, 2019.

Additionally, Miller indicates that she was not paid all the time that she was owed after the suspension was reversed. She submits a January 17, 2017 letter to her prior counsel where she asked him to “pursue the possibility of adding this into my settlement to include any retroactive pay and/or retirement (of which I am eligible) pay at the level of which would have been achieved to date.” Therefore, she is seeking all the time owed as a result of the reversal of her suspension.

In response, the appointing authority presents that promotional candidates are appointed in order of rank according to seniority, veteran status and location preferences. Additionally, the Custody Recruitment Unit reviews work history, weapons privileges status, driver’s license status and an updated background report for the top-ranking candidate. The appointing authority indicates that candidates whose work history includes major discipline within the past three years are bypassed for custody supervisor positions. It presents that Miller was appropriately bypassed for a Lieutenant position at the Edna Mahan Correctional Facility in July 2015 because her work history at the time that decision was made reflected a 90-day suspension for insubordination and it is not relevant that the Commission subsequently reversed her suspension on December 7, 2016.

Concerning Miller’s claim for back pay, the appointing authority’s records indicate that on April 11, 2017, she received mitigated back pay in the amount of \$26,123.02 for her suspension from July 15, 2013 to November 17, 2013 and that she is not owed any additional amounts. Further, it highlights that the Commission’s decision reversing Miller’s suspension did not order it to appoint her to a position as a Lieutenant. Finally, it argues that Miller’s appeal is untimely as it was filed more than three years after the subject promotional eligible list (PS60272I) expired on September 5, 2015.

In reply, Miller reiterates that if a Major at Northern State Prison had not charged her with being insubordinate, she would not have been bypassed for a position as a Lieutenant. She states that this Major was found not to be credible by the Administrative Law Judge. Specifically, the Major alleged that Miller was insubordinate because she refused to remove a sweater in violation of the dress code. In response, Miller advised the Major that she was not removing the sweater because she was ill. However, at the hearing, the Major testified that if he had known that Miller was ill, he would have allowed her to continue to wear the sweater and would not have brought major disciplinary charges against her. Therefore, she argues that she should be entitled to retire at a Lieutenant’s salary.

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. *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.

N.J.A.C. 4A:2-1.1(b) provides 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.

Initially, the Commission finds that Miller's requests are untimely. In this regard, the Commission reversed Miller's suspension on December 7, 2016. Therefore, as of that date, any claim that she was improperly bypassed based on her suspension, and the financial consequences of the bypass based on her suspension, should have been filed within 20 days of receipt of that decision. *See e.g., In the Matter of Derek Slimmer, Correction Lieutenant (PS6072I), Department of Corrections*, Docket No. A-3911-16T3 (App. Div. November 28, 2018). However, her appeal was filed in October 2018, which is clearly untimely. Further, if she is additionally claiming that she is owed money based on her suspension as a Sergeant, irrespective of the Commission's determination concerning her request for a retroactive appointment as a Lieutenant, her request is well past 20 days from when the appointing authority paid back pay for her suspension as a Sergeant on April 11, 2017.

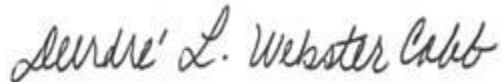
Regardless, even assuming, *arguendo*, that Miller's request for a retroactive appointment as a Lieutenant was timely, her request is without merit. Absent any unlawful motive, it is permissible for an appointing authority to consider an individual's pending discipline as a basis for bypassing a candidate on a certification. *See Slimmer, supra; In the Matter of Michael Cervino* (MSB, decided June 9, 2004). *See also, In the Matter of Gary R. Kern, et al.* (MSB, decided October 11, 2000) (It was determined that appellant was not entitled to retroactive date of appointment, nor were Civil Service law or rules violated, when the appointing authority initially bypassed him due to pending disciplinary charges that were departmentally dismissed); *In the Matter of Michael Boylan* (MSB, decided October 22, 2003) (It was within the appointing authority's discretion to bypass appellant due to two discrimination complaints filed against him, which were transmitted to the OAL for a hearing and which might have resulted in disciplinary charges). Consequently, at the time the appointing authority made its decision to bypass Miller, she had a pending disciplinary matter and it was within its discretion, under the Rule of Three, to bypass her as there is no evidence in the record that the appointing authority's decision to suspend her was based on an unlawful motive. The fact that the incident was ultimately found to be non-meritorious is of no moment as there was no finding in that matter of invidious motivation. Moreover, it cannot be assumed, contrary to Miller's assertion, that she would have been appointed as Lieutenant. Accordingly, she has not met her burden of proof in this matter.

ORDER

Therefore, it is ordered that this request 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 17th DAY OF APRIL, 2019



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