



STATE OF NEW JERSEY

In the Matter of A.O.,
Fire Fighter (M1862W), City of
Passaic

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2021-1961

Bypass Appeal

ISSUED: May 2, 2022 (JET)

A. O., represented by Michael L. Prigoff, Esq., appeals the bypass of his name on the Fire Fighter (M1862W), City of Passaic, eligible list.

The appellant took the open competitive examination for Fire Fighter (M1862W),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on October 14, 2020 (OL200792). In disposing of the certification, the appointing authority bypassed the appellant, who was the in third position on the certification, and recorded him as “retained, interested others appointed.” The appointing authority appointed eligibles below the appellant in the sixth, seventh, eighth, ninth and 13TH positions on the certification. It is noted that the M1862W list has been previously certified three times and 19 appointments have been made.²

On appeal, the appellant asserts that he was improperly bypassed. Despite being provided the opportunity, he did not provide any additional arguments, information or evidence in support of his appeal in this matter.

Despite being provided with the opportunity, the appointing authority did not provide any arguments or information in response to the appellant’s appeal.

¹ It is noted that the M1862W list promulgated on March 29, 2019, was scheduled to expire on March 28, 2021, and was extended until March 28, 2023.

² The appellant was also certified on the current OL220205 (February 17, 2022) certification of the list as the number one ranked eligible. That certification has not yet been returned.

In a prior matter involving the same eligible list, appellant and appointing authority, the Civil Service Commission (Commission) upheld the bypass of the appellant's name from a prior certification. In that matter, the appointing authority provided the appellant's employment application for review, where he listed that he had been investigated, arrested or charged with various offenses on several occasions between 2008 and 2018, as well as had multiple motor vehicle infractions. In that matter, the Commission found that the appellant's background was sufficient to support his bypass from the certification. *See In the Matter of A.O.* (CSC, decided January 20, 2021).

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.

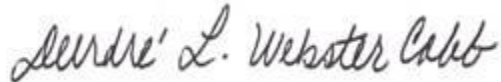
In this matter, the appellant has provided no substantial evidence to show that the bypass was improper. It is noted that in *A.O.*, *supra*, the appointing authority provided a legitimate basis for not selecting the appellant. A review of the prior matter indicates that the appellant's record reveals six motor vehicle infractions and seven arrests between 2008 and 2018. As noted in the prior decision, an appointing authority has the discretion to dispose of a certification within the guidelines of Title 11A of the New Jersey Statutes Annotated and Title 4A of the New Jersey Administrative Code. This discretion includes utilizing each candidate's history and qualifications to determine the best candidate from a list of three eligibles, any of whom may be selected under *N.J.A.C.* 4A:4-4.8(a)3. In this regard, it is clear that the appellant's background, including his arrests and motor vehicle infractions, could be considered in determining whether he could be bypassed on the subject list. Although some of the incidents and charges occurred some time ago when the appellant was a juvenile, the last interactions in 2016 and 2018 were more recent. Such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Fire Fighter. In this regard, the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. *See Karins v. City of Atlantic City*, 152 *N.J.* 532 (1998). Accordingly, the appellant has not sustained his 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 27TH DAY OF APRIL 2022



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