



STATE OF NEW JERSEY

In the Matter of Rosemarie Logue,  
Senior Technician, MVC (PS9346T),  
Motor Vehicle Commission

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

CSC Docket Nos. 2022-134, *et. al.*

Bypass Appeals

**ISSUED: JUNE 20, 2022 (JET)**

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Rosemarie Logue appeals the bypasses of her name on the Senior Technician, MVC (PS9346T), Motor Vehicle Commission, eligible list. Since these matters concern similar issues, they have been consolidated herein.

The appellant took the promotional examination for Senior Technician, MVC (PS9346T), Motor Vehicle Commission, achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on March 23, 2021, to three different MVC locations (PS210267, PS210273, and PS210275). In disposing of the PS210267 certification, the appointing authority bypassed the appellant, who was the 25<sup>th</sup> ranked candidate in 6<sup>th</sup> position on the certification, and recorded her as, “retained, interested others appointed.” The appointing authority appointed Ryan Armstrong, who was the 67<sup>th</sup> ranked eligible in 16<sup>th</sup> position effective June 19, 2021, and Christine Barrientos, who was the 69<sup>th</sup> candidate in 18<sup>th</sup> position on the certification, effective June 19, 2021. In disposing of the PS210273 certification, the appointing authority bypassed the appellant, who was tied as the 25<sup>th</sup> ranked candidate in 5<sup>th</sup> position on the certification, and recorded her as “retained, interested others appointed.” The appointing authority appointed Walter Ribitzki, who was the 43<sup>rd</sup> ranked candidate in 8<sup>th</sup> position on the certification, effective June 19, 2021, Ryan Leahy who was the 96<sup>th</sup> ranked candidate in 25<sup>th</sup> position on the certification, effective June 19, 2021, and William Richardson, who was the 98<sup>th</sup> candidate in 26<sup>th</sup> position on the certification, effective June 19, 2021. In disposing of the PS210275 certification, the appointing authority bypassed the appellant, who was the 25<sup>th</sup> ranked candidate in 10<sup>th</sup> position, and recorded her as “retained, interested others

appointed.” The appointing authority appointed Eric Bumbera, who was the 34<sup>th</sup> ranked eligible in 13<sup>th</sup> position, effective June 19, 2021, Monique Shields, who was the 47<sup>th</sup> ranked candidate in 22<sup>nd</sup> position, effective June 19, 2021, Cherie Fausel, who was tied for rank 54 in 27<sup>th</sup> position, effective June 19, 2021, and Jonathan Klama, who was tied for rank 54 in 28<sup>th</sup> position, effective June 19, 2021. It is noted that the PS9346T list was certified 31 times and 71 appointments were made. It is also noted that the appellant was appointed from the subject list (PS211183 certification), effective January 15, 2022.

On appeal to the Civil Service Commission (Commission), the appellant asserts that she has been serving at the appointing authority for five years, and she has completed various trainings. The appellant adds that a recent employee evaluation reflected favorable comments from her supervisor, and her prior experience includes over five years of experience in retail management.

In response, the appointing authority asserts that the appellant did not articulate any substantive reasons to evidence that she was improperly bypassed on the subject list. The appointing authority explains that, although the appellant states that she possesses five years of experience at the appointing authority and five years of experience in retail management, completed various trainings, and that she received a favorable employee evaluation, such reasons do not constitute reasons that show that she was improperly bypassed. Moreover, the appointing authority maintains that the appointed candidates in this matter were properly appointed, as they possessed more relevant experience than the appellant at the time of their appointments.

## 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 bypasses were improper. Initially, the appellant has not provided any information to show that she is more qualified than any of the appointed candidates. Rather, she essentially states that she possesses a variety of experience and trainings, and received a favorable employee evaluation. However, she has not established in any way that she was more qualified than the appointed candidates at the time they were appointed. It is within an appointing authority’s discretion to choose its selection method, and the appointing authority selected the candidates it

determined were best suited for the position. As such, the appointing authority provided a legitimate basis for not selecting the appellant.

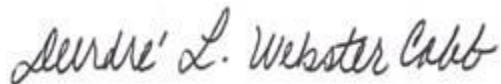
Consistent with *N.J.A.C. 4A:4-4.8(a)3*, an appointing authority has selection discretion under the “Rule of Three” to appoint a lower ranked eligible absent any unlawful motive. See *In the Matter of Michael Cervino* (MSB, decided June 9, 2004). Compare, *In re Crowley*, 193 *N.J. Super.* 197 (App. 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). The Commission has reviewed this matter and finds that the appellant has not established that she was bypassed for an invidious reason. Additionally, 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). Although the appellant contends that she possesses experience as noted above, that experience does not overcome that the selected candidates were determined to be more suited for the position. While the appellant ranked higher on the certifications based on her examination score, that fact, by itself, is insufficient to establish that her bypass was improper given the discretion afforded an appointing authority under the Rule of Three. Moreover, the appellant’s eventual appointment from the subject list, effective January 15, 2022, further demonstrates that her prior bypasses were not in bad faith or based on invidious motives. Accordingly, the appellant has not sustained her burden of proof in this matter.

### ORDER

Therefore, it is ordered that these appeals 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 15<sup>TH</sup> DAY OF JUNE 2022




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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries

Allison Chris Myers

and  
Correspondence

Director  
Division of Appeals  
& Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
PO Box 312  
Trenton, New Jersey 08625-0312

c: Rosemarie Logue (2022-134; 2022-310; 2022-311)  
Dana Foraker  
Agency Services  
Records Center