



STATE OF NEW JERSEY

In the Matter of Chenise Zellars, Senior Technician, MVC (PS9346T), Motor Vehicle Commission	:	
	:	
	:	FINAL ADMINISTRATIVE ACTION
	:	OF THE
	:	CIVIL SERVICE COMMISSION
	:	
	:	
CSC Docket Nos. 2022-415, <i>et. al.</i>	:	
	:	
	:	Bypass Appeal
	:	

ISSUED: JUNE 20, 2022 (JET)

Chenise Zellars appeals the bypass of her name on the Senior Technician, MVC (PS9346T), Motor Vehicle Commission eligible list.

The appellant took the open competitive examination for Senior Technician, MVC (PS9346T), Motor Vehicle Commission,¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on March 19, 2021 (PS210252), March 23, 2021 (PS210270) and March 24, 2021 (PS210286). In disposing of the PS210270 certification, the appointing authority bypassed the appellant, who was tied for rank 54 in the 21st position, due to her unsatisfactory employment record, and appointed Maria Rossi, who was tied for rank 69 in the 25th position, effective June 19, 2021. The appellant, who tied for rank 54 in the 23rd position on the PS210252 certification, and tied for rank 54 in the 18th position on the PS210286 certification, was not bypassed on those certifications since a lower ranked candidate was not appointed. It is noted that the PS9346T list was certified 31 times and 71 appointments have been made.

On appeal, the appellant asserts that she was improperly bypassed. She argues that another employee, A.F., was promoted despite that she was issued both minor and major disciplinary actions.² Moreover, the appellant states that only a

¹ It is noted that the PS9346T list promulgated on March 19, 2020, is scheduled to expire on March 18, 2023.

² A.F. was appointed as a Senior Technician, MVC from certification PS211145, effective December 18, 2021. The appellant’s name did not appear on that certification.

minor disciplinary action was recently issued to her, and she has not been previously removed from a list for disciplinary reasons.

Despite being provided with the opportunity, the appointing authority did not provide any arguments or information in response to the appellant's appeal. However, the appointing authority provided documentation indicating that the appellant was charged with a major disciplinary infraction, which on March 2, 2021, was amended to a five-day suspension for chronic or excessive absenteeism via a settlement agreement.

It is noted that the appellant's personnel records reflect multiple disciplinary infractions, including a 2007 infraction for failure to be at her assigned work station, and multiple charges from 2007 through 2020 for chronic or excessive absenteeism, where both minor and major disciplinary actions were issued against her.

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. The appellant's record reveals multiple disciplinary actions, which were properly used to bypass the appellant from the PS210270 certification. 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 employment background, including multiple infractions for chronic or excessive absenteeism, could be considered in determining whether she could be bypassed on the PS210270 list. Moreover, it cannot be ignored that the most recent infraction occurred in 2021. In this regard, the Appellate Division has upheld the removal of candidate's names with disciplinary histories from promotional lists on numerous occasions. *See In the Matter of John Bonafide*, Docket No. A-1658-04T1 (App. Div. February 7, 2006); *In the Matter of Howard Doherty, Correction Sergeant, Department of Corrections (PS7099I)*, Docket No. A-4959-01T1 (App. Div. April 5, 2004); *In the Matter of Frank R. Jackson, Correction Lieutenant, Department of Corrections (PS6320I)*, Docket No. A-1617-00T2 (App. Div. March 28, 2002); *In the Matter of Albert S. Waddington, County Correction Sergeant (PC0349T)*,

Camden County, Docket No. A-568-99T2 (App. Div. December 5, 2000). Moreover, the fact that other employees may have been promoted with disciplinary records is immaterial as the Civil Service Commission reviews each matter on its own merits based on the relevant regulatory framework. Based on her unsatisfactory employment record, the appointing authority, in its discretion, properly bypassed the appellant's name from the subject certification. Moreover, as 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 Civil Service Commission has reviewed this matter and does not find any evidence that the appellant was bypassed for an invidious or unlawful reason.

Regarding the appellant's non-selection from the PS210252 and the PS210286 certifications, such actions do not constitute a bypass since candidates ranked lower than herself on the certifications were not appointed to the subject position. Rather, the appointing authority merely did not select the appellant for an appointment from those certifications. Moreover, the fact that her name appeared on those certifications does not entitle her to an appointment. 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). Accordingly, the appellant has not sustained her 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 15TH DAY OF JUNE 2022

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Chenise Zellars (Docket No's. 2022-415, 2022-417 and 2022-418)
Dana Foraker
Division of Agency Services
Records Center