



STATE OF NEW JERSEY

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

In the Matter of Jason Martinez, Police
Officer (S9999A), Lakewood

List Bypass

CSC Docket No. 2023-1150

ISSUED: November 1, 2023 (EG)

Jason Martinez appeals the bypass of his name on the Police Officer (S9999A), Lakewood eligible list.

By way of background, the appellant, a non-veteran, took and passed the examination for the subject title and his name appeared on the resultant eligible list, which promulgated on May 15, 2020, and expired on November 9, 2022. A certification of 20 eligibles was issued on March 10, 2022 (OL220275) with the appellant listed in the 11th position. In disposing of the certification, the appointing authority appointed two eligibles listed higher than the appellant, bypassed the appellant, and appointed the eligible in the 20th position. Additionally, one other eligible was bypassed for appointment, three eligibles were not interested at that time and the rest were removed from the eligible list.

On appeal to the Civil Service Commission (Commission), the appellant states that he was advised that he was denied an appointment due to an address issue he had while applying to another local law enforcement department. He asserts that in 2016 he was supposed to move to Belleville, and he took the Civil Service examination indicating a Belleville address. The appellant argues that due to unforeseen circumstances with the landlord, he was unable to move officially. Additionally, he contends that due to poor wording on his State Police background check and the State Police oral board notes, he was subsequently removed from moving forward with his State Police application at that time. The appellant submits letters from the

State Police indicating that based on its background investigation it would have offered employment had a board member not objected based on their perception that the appellant had falsified a law enforcement application. The appellant also submits a letter from the State Police indicating that he later received an offer of employment from it. Further, the appellant claims unspecified discrimination in not being hired by the appointment authority.

In response, the appointing authority argues that the State Police had rejected the appellant in May 2018 and again in 2019 for admittedly lying on the prior application by trying to establish residency in Belleville solely for the purpose of satisfying the residency requirement and receiving residents' preference in the Civil Service Law Enforcement Examination. While before the State Police Command Review Board (CRB) he admitted that he never lived at the Belleville address. As a result, the CRB determined that hiring the appellant could be problematic as his lack of candor would cast doubt on any testimony he may have to give as an officer. While conducting its background investigation, investigators from the appointing authority reviewed notes from the State Police concerning the appellant. Among the notes was a quote from an employee of Office of the Attorney General stating "The applicant continues to blame others and downplay his fraudulent use of a Belleville address in order to gain employment with the Belleville Police department. He does not possess the necessary attributes of a Trooper and should not move forward." Further, it argues that the fact the appellant was later offered employment by the State Police does not negate his prior rejections or address his candor issues. It adds that any known issues affecting a witness's credibility or candor, must be disclosed to the defense in a criminal proceeding, including behavior and actions prior to employment as a law enforcement officer. Finally, it argues that police officers are held to a higher standard of responsibility, professionalism and integrity, and the appellant is not a suitable candidate given these standards.

In reply, the appellant argues that he did not have a documented history of lying and fraudulent actions, and that it was only one incident. He also contends that he did not try to hide his action and didn't blame anyone else. He states that he disclosed the Belleville address to the State Police on his first application. Additionally, the appellant asserts that he accepts that the appointing authority may deny his application but he does not want to be denied for inaccurate information. In this regard, he contends that he was cleared of any candor issue.

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. Moreover, the "Rule of Three" allows an appointing authority to use discretion in making appointments. See *N.J.S.A.* 11A:4-8 and *N.J.A.C.* 4A:4-4.8(a)3ii. As long as that discretion is utilized properly, an appointing authority's decision will not be overturned. *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). Moreover, it is noted that the appellant has the burden of proof in this matter. See N.J.A.C. 4A:2-1.4(c).

The appointing authority has indicated that it bypassed the appellant for appointment based on his misrepresentation of his residence on a prior law enforcement application in an apparent attempt to achieve a residency status and/or residency preference. The appellant has not denied that he indicated on an application a residence that he did not reside at and only argues that it was a mistake. In this regard, the appellant has not rebutted the appointing authority's assertions. Additionally, it is noted that appointing authorities are permitted to bypass applicants for any valid non-discriminatory business reasons, which would include their concern over whether the applicant would be compromised as a witness in a criminal trial. See *In the Matter of Charles Martina, Jr.* (CSC, decided July 13, 2017) (The appointing authority presented a valid business reason for bypassing the appellant for a position as a Police Sergeant as the appellant was facing a pending disciplinary charge involving untruthfulness, which if upheld, would affect his ability to serve in the subject title, especially since one of the duties of the subject title is to testify in court).

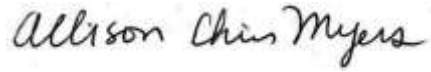
Further, while the appellant claimed discrimination in the bypass of his name for appointment, he did not establish a *prima facie* case of discrimination or improper political motivation or nepotism by a preponderance of the evidence where, other than mere allegations, he did not present any substantive evidence regarding the bypass that would lead the Commission to conclude that the bypass was improper. Moreover, it is noted that 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). The appellant has not presented any substantive evidence regarding his 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." In this regard, the appointing authority presented legitimate reasons for the appellant's bypass. Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the Police Officer (S9999A), Lakewood eligible list was proper, and the appellant has failed to meet 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 1ST DAY OF NOVEMBER, 2023



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