

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Carmen Del Palazzo,
Deputy Police Chief (PM2282E),
Voorhees

Administrative Appeal

CSC Docket No. 2023-2356

ISSUED: November 1, 2023

Carmen Del Palazzo, represented by Patricia A. Barasch, Esq., appeals the determination of the Division of Agency Services (Agency Services) to grant a waiver of examination for Deputy Police Chief (PM2282E), Voorhees.

By way of background, effective August 1, 2022, April Herrington was provisionally appointed to the Deputy Police Chief title.¹ Subsequently, the subject announcement was issued on February 1, 2023, and was open to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the April 30, 2023, closing date and were serving in the title of Police Captain. A review of the record finds that two candidates, the appellant and

¹ *N.J.A.C.* 4A:4-1.5 (Provisional appointments) provides:

- (a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:
 1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;
 2. The appointing authority certifies that the appointee meets the minimum qualifications for the title at the time of the appointment; and
 3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.
- (b) Any employee who is serving on a provisional basis and who fails to file for and take an examination that has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Chairperson or designee and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Chairperson or designee for good cause.

Herrington, filed applications for the subject examination. Voorhees requested that the subject announcement be processed via a waiver of competitive examination pursuant to *N.J.A.C.* 4A:4-2.7. Upon review of the request, Agency Services determined that the criteria pursuant to *N.J.A.C.* 4A:4-2.7 had been met and granted the waiver. As a result, Herrington was appointed to the Deputy Police Chief title effective April 6, 2023.²

In an appeal filed on May 2, 2023, the appellant argues that “the waiver was improper insofar as all four factors set forth in *N.J.A.C.* 4A:4-2.7 were not satisfied. Specifically, the first factor requires that in order for a waiver to be authorized, both candidates must have successfully tested into the current Captain’s position such that they are on equal footing.” In this regard, he argues that he was appointed as a Police Captain via waiver of examination³ and thus, the Civil Service Commission (Commission) erred in granting Voorhees a waiver of examination for Deputy Police Chief. He further argues that the “Commission’s granting of a waiver to the Township in this specific situation undermines the very purpose of New Jersey Civil Service Law and Rules. In this regard, the touchstone of New Jersey’s Civil Service System is to ensure that all employment decisions in the public sector . . . are made on the basis of merit, and the competitive testing process is specifically intended to prevent nepotism and other similar abuses of the merit selection process. Here, the Township’s Police Chief Louis Bordi used the waiver process to benefit his wife – April Herrington Bordi – by placing her in the number two position of Deputy Police Chief. Quite frankly, it is hard to imagine a greater abuse of the merit selection process than the waiver granted to Chief Bordi and the Voorhees Township Police Department in the present matter.”

In a letter dated June 9, 2023, Division of Appeals and Regulatory Affairs (DARA) staff informed the appellant, in part, that a waiver of competitive examination pursuant to *N.J.A.C.* 4A:4-2.7, is the process by which a qualified permanent employee in the career service may be appointed without competitive examination **and** without the establishment of an eligible list if certain conditions are present. Accordingly, **only** the employee being considered for appointment upon waiver of competitive examination must meet the conditions presented in *N.J.A.C.* 4A:4-2.7(a)1 and 2. Since the appellant was not the candidate appointed to the Deputy Police Chief title, his appointment as a Police Captain via waiver of examination is immaterial and this argument was misplaced. Staff further informed the appellant that *N.J.A.C.* 4A:2-1.4(c) and *N.J.A.C.* 4A:4-6.3(b) provide that the appellant has the burden of proof in appeals of this type and that he did not provide any details regarding the alleged abuses of Civil Service law and rules or provide any

² A review of available records finds that at its meeting on April 10, 2023, the Voorhees Township Committee adopted Resolution 123-23 which approved the “appointment of April Herrington to the permanent title of Deputy Chief of the Voorhees Township Police Department.” *See* <https://voorheesnj.com/wp-content/uploads/2023/04/tcm041023.docx>.

³ A review of the record finds that effective August 1, 2013, the appellant was appointed to the Police Captain title via waiver of examination.

substantive evidence in support of his allegations. As such, the appellant was offered the opportunity to supplement his appeal with any details regarding this matter or substantive evidence to support his claims.

In response, the appellant presents, “I must first address [DARA staff’s] conclusion that the waiver was not improperly granted, and [DARA staff’s] statement that ‘since [the appellant] was not the [candidate] appointed to the Deputy Police Chief title, his appointment as a Police Captain via waiver of examination is immaterial.’ Significantly, the rule in question provides that ‘the Chair of the Civil Service Commission *may* authorize such waiver’ when all of the criteria are met. Thus, the use of the term ‘may’ makes clear that the Civil Service Commission is not required to grant a waiver, even if all of the criteria are met, but rather has discretion as to whether or not to process the promotion without a competitive examination.” The appellant further presents that “as for [staff’s] statement that Captain Del Palazzo’s appointment as an [*sic*] RA4⁴ candidate into his current Captain’s position is ‘immaterial’ to the Commission’s grant of a waiver of the competitive examination for the Deputy Police Chief, it is my understanding that completely contradictory information was provided by a Commission official during a February phone call in response to an inquiry from Captain Del Palazzo’s spouse. [footnote omitted].” The appellant further provides:

[T]here are several specific examples of favorable treatment of the Chief’s spouse to [my detriment] . . . as follows:

- After the retirement of the former Deputy Chief of Police, and prior to February 2022, during a conversation between Captain Del Palazzo and Chief Bordi, Captain Del Palazzo put the Chief on notice that he was interested in taking the civil service test for the Deputy Chief position. Chief Bordi responded that he would ‘have to talk to the Committee,’ and that his wife ‘preferred not to test.’
- Subsequent to that conversation, by email dated February 15th, 2022, the Township announced that it would be ‘conducting interviews for a potential promotion to the position of Deputy Chief within the Voorhees Township Police Department;’⁵
- Despite Captain Del Palazzo’s superior qualifications for the Deputy Chief position, following the interview process, after several months of delay, the Township Committee voted to promote Captain Herrington Bordi, the Chief’s wife, into the

⁴ The appointment type code “RA4” refers to “Regular Appointment (Rule 4A:4-2.7 Promotion).” In other words, an employee who has been appointed via waiver of examination.

⁵ It is noted that the appellant did not provide a copy of this email during the appeal process.

Deputy Chief position in July 2022.⁶ Significantly, several members of the Township Committee have personal relationships with both the Chief and his wife;

- Since the retirement of Deputy Chief William Donnelly on December 31st, 2020, and continuing to the present time, Captain Herrington Bordi has been supervised by, and has had her performance evaluated by, her husband Chief Bordi, a clear conflict of interest;
- During the time that Captain Del Palazzo and Captain Herrington Bordi have served as Captains reporting to the Chief, Captain Del Palazzo has been excluded from hiring decisions while the Chief and Captain Herrington Bordi have made such decisions together.

The appellant requests that the waiver of examination pursuant to *N.J.A.C. 4A:4-2.7* be revoked “and allow a competitive examination to be held.”

The appellant adds that he “was not afforded an opportunity to test into the Captain’s position, despite his desire to do so and despite his having invested financial resources and significant time into preparing for the Captain’s promotional test in 2013. Thus, while the Township had initially represented to Captain Del Palazzo that he could choose to test into the position – which was Captain Del Palazzo’s preference and stated intention – he was later given no choice but to accept the RA4 waiver due to an error on part of the Township . . . Thus, for purposes of the present appeal, neither the Township nor Civil Service should be able to use against Captain Del Palazzo the fact that he did not test into the Captain’s position because the waiver had been granted by default as a result of the Township’s actions.”

In reply, Voorhees, represented by José A. Calves, Esq., presents that the appellant’s “argument that the requirements under *N.J.A.C. 4A:4-2.7* were not met are legally incorrect and based on a fundamental misreading of the regulation. Further, Del Palazzo bears the burden of proof for his allegations of nepotism and improper bias. Even after allowing for additional supplementation, Del Palazzo has not met that burden and has provided no evidence of wrongdoing. Instead, Del Palazzo cites only his own self-serving and unsworn statements unsupported by any objective evidence.” In this regard, Voorhees notes that “Del Palazzo fails to provide any legal authority or even argument contradicting the Commission’s interpretation of *N.J.A.C. 4A:4-2.7(a)1*. Instead, he only cites an alleged phone call between an

⁶ A review of available records finds that at its meeting on July 18, 2022, the Voorhees Township Committee adopted Resolution 221-22 which “approv[ed] the promotion of Captain April Herrington to the provisional position of Deputy Chief in the Voorhees Township Police Department.” See <https://voorheesn.com/wp-content/uploads/2022/11/tcm071822.docx>.

unnamed Commission employee and his wife . . . This is clearly insufficient to overrule the black letter wording of the regulation.” Voorhees argues that the appellant “provides a list of unverified reasons why he had not taken the relevant promotional exam. In so arguing, he continues to miss the mark. Whether he took the exam or not is irrelevant to the waiver factors outlined in the regulations. There is no legal requirement that other candidates must also meet all four factors.” Voorhees notes in regard to the appellant’s claim that “Chief Louis Bordi improperly influenced the waiver process to benefit Captain Herrington, his wife,” that he failed to submit any certifications, e-mails, documents, or extrinsic evidence of any kind, even after the Commission provided him an additional opportunity to do so. Instead, he only cited several unproven “examples” of bias. Voorhees presents that “it is difficult to see how the sending of an e-mail announcing interviews is an example of bias. It is equally difficult to see how the Township Committee, not Chief Bordi, overseeing the interview and decision[-]making process is improper. Third, two of the allegations, regarding supervisions and hiring decisions, allegedly occurred after the waiver and have nothing to do with the promotion process for Captain Herrington. Finally, the allegation concerning Chief Bordi’s alleged comments and the bias of the unnamed committee members, are naked assertions with no corroboration or supporting evidence.” Voorhees maintains that “Chief Bordi recused himself from all steps in the interview and promotion process regarding Captain Herrington. He did not provide a recommendation to the committee . . . , nor did he apply for the waiver on behalf of the appointing authority. The ultimate decision to recommend Ms. Herrington was made by the governing body and the waiver was granted by the Commission, over which Chief Bordi obviously has no influence.”

CONCLUSION

N.J.A.C. 4A:4-2.7 (Promotion upon waiver of competitive examination) provides, in part, that following the announcement of a promotional examination, the promotion of a qualified permanent employee in the career service by regular appointment without competitive examination and without the establishment of an eligible list may be made if: 1. The employee has been successfully tested in the basic skills required for the promotional title; 2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title; 3. The number of interested eligibles for the promotional examination does not exceed the number of promotional appointments by more than two; and 4. Veterans’ preference rights are not a factor. *N.J.A.C.* 4A:2-1.4(c) and *N.J.A.C.* 4A:4-6.3(b) provide that the appellant has the burden of proof in appeals of this type.

With respect to the appellant’s concern that “completely contradictory information was provided by a Commission official during a February phone call in response to an inquiry from Captain Del Palazzo’s spouse,” even assuming, *arguendo*, that the appellant’s spouse received contradictory information during a phone call, this does not entitle him to administrative relief. Furthermore, this issue is moot as this matter is before the Commission for determination. In this regard, as clearly articulated in DARA staff’s June 9, 2023, letter, “*N.J.A.C.* 4A:4-2.7(a)1 and 2 provide,

‘the employee has . . .’ and **not**, ‘all eligible candidates have . . .’ Since Mr. Del Palazzo was not the employee appointed to the Deputy Police Chief title, his appointment as a Police Captain via waiver of examination is immaterial and this argument is misplaced.” As such, the Commission emphasizes that the appellant’s appointment to the Police Captain title via waiver of examination is of no moment in the present matter.

The Commission notes that the appellant is correct in his assertion that “even if all of the criteria are met [pursuant to *N.J.A.C.* 4A:4-2.7], [the Commission] has discretion as to whether or not to process the promotion without a competitive examination.” Thus, there is no disagreement in this regard. However, although the appellant claims the granting of the waiver was improper, he has not demonstrated that the criteria pursuant to *N.J.A.C.* 4A:4-2.7 has not been met or that any Civil Service law or rules have been violated.⁷ In addition, although he maintains that the waiver request was motivated by nepotism and cites “examples of favorable treatment of the Chief’s spouse to [his] detriment,” the appellant, despite having been provided with the opportunity during the appeal process, has not provided any substantive evidence beyond mere allegations to support these claims. Furthermore, it is noted that all five “examples” provided by the appellant occurred prior to Herrington’s provisional appointment effective August 1, 2022. In this regard, the appellant provides no explanation as to why he did not raise any concerns at that time or at the time of Herrington’s provisional appointment.⁸

Additionally, it is noted that even if the appellant’s request were granted, *i.e.*, the waiver was “revoked” and a competitive examination were held, the appellant’s permanent appointment would not be mandated, even if the appellant was the only eligible who achieved a passing score. In this regard, *N.J.A.C.* 4A:4-4.2(c)2 provides, in pertinent part, that an appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means, from promotional lists:

The names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment . . .

- i. When fewer than three interested eligibles are certified and no provisional currently serving in the title is listed on the

⁷ The Commission further notes that the New Jersey Supreme Court has upheld the processing of an examination through the provisions of *N.J.A.C.* 4A:4-2.7 as being within the lawful discretion of the Commission. See *Pringle v. Department of Civil Service*, 45 *N.J.* 329 (1965) and *Falcey v. Civil Service Commission*, 16 *N.J.* 117 (1954).

⁸ *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.

certification, the appointing authority may either: make a permanent appointment; make a provisional appointment from the list; make a provisional appointment of another qualified person if no eligible on the list is interested; or vacate the position/title.

- ii. When fewer than three interested eligibles are certified and a provisional who is currently serving in the title is listed on the certification, the appointing authority may either: make a permanent appointment; or vacate the position/title.

Furthermore, even assuming that both the appellant and Herrington achieved passing scores and a certification were issued with the appellant's name appearing in the first position, the appointing authority could still bypass his name and appoint Herrington.⁹

Similarly, while the appellant was not bypassed from a list for appointment, his claim is that he was not appointed in favor of another candidate for reasons other than merit and fitness. As such, the present matter can be viewed as akin to a bypass matter, in that another candidate was appointed to the subject title and the appellant claims that the appointment was motivated by an improper reason. However, based on the appellant's submissions, he has not established a *prima facie* case that his non-appointment was based on nepotism. Rather, the appellant has presented mere allegations without evidence, which is insufficient to establish a *prima facie* case. *See In the Matter of Chirag Patel* (CSC, decided June 7, 2017). In addition, the appellant has not provided any evidence to rebut Voorhees' claim that "Chief Bordi recused himself from all steps in the interview and promotion process regarding Captain Herrington. He did not provide a recommendation to the committee . . . , nor did he

⁹ Under the Rule of Three, after a list is certified, the appointing authority has the discretion to select any of the top three candidates, provided that no veteran heads the list. *See N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-7 and N.J.A.C. 4A:4-4.8(a)3i*. A higher-ranked candidate who challenges the bypass of their name has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to bypass their name from an eligible list was motivated by discrimination, retaliation, or other improper motive. *See N.J.A.C. 4A:2-1.4(c)*. Moreover, in cases where dual motives are asserted for an employer's actions, an analysis of the competing justifications to ascertain the actual reason underlying the actions is warranted. *See Jamison v. Rockaway Township Board of Education*, 242 *N.J. Super.* 436 (App. Div. 1990). In *Jamison, supra*, at 445, the court outlined the burden of proof necessary to establish discriminatory or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination or retaliation by a preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-discriminatory or non-retaliatory reason for the decision. If the employer produces evidence to meet its burden, the complainant may still prevail if he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she has established a presumption of discriminatory or retaliatory intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the discriminatory or retaliatory motive.

apply for the waiver on behalf of the appointing authority. The ultimate decision to recommend Ms. Herrington was made by the governing body.” Furthermore, although the appellant claims that he possesses “superior qualifications,” he does not describe these qualifications or provide any substantive evidence that he is more qualified than Herrington. Moreover, he does not provide any evidence that Herrington does not possess the background or experience to be appointed as Deputy Police Chief.

The Commission again emphasizes that the burden of proof rests with the appellant and his mere allegations, without substantive evidence, does not provide a basis to revoke the waiver. As the appellant has not met his burden of proof in demonstrating by a preponderance of the evidence that the granting of the waiver of competitive examination to Voorhees was improper, his appeal is denied.

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

Dolores Gorczyca

Dolores Gorczyca
Presiding Member
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Patricia A. Barasch, Esq.
José A. Calves, Esa.
Stephen Steglik
Carmen Del Palazzo
April Herrington
Division of Agency Services

Records Center