



**STATE OF NEW JERSEY**

In the Matters of Madonna Morris  
and Pamela Felts, Personnel Aide  
(PM0395D), Jersey City School  
District

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

CSC Docket Nos. 2023-1522  
and 2023-1523

Bypass Appeals

**ISSUED:** November 22, 2023 (JET)

Madonna Morris and Pamela Felts, represented by Randi Doner April, Esq., appeal the bypasses of their names on the Personnel Aide (PM0395D), Jersey City School District eligible list. Since these appeals involve similar issues, they have been consolidated herein.

The appellants took the promotional examination for Personnel Aide (PM0395D), Jersey City School District, achieved a passing score, and were ranked on the subsequent eligible list. The appellants' names were certified on September 6, 2022 (PL221264). In disposing of the PL221264 certification, the appointing authority appointed Shametia Spencer, Kimberly Hood and Annette Smith, the first, fourth and fifth ranked eligibles, effective December 22, 2022; and indicated that Morris and Felts, the second and third ranked eligibles, should be "retained, interested others appointed." It is noted that the PM0395D list promulgated on September 1, 2022, and expires on August 31, 2025.

On appeal, the appellants assert that they were improperly bypassed, as they ranked in the top three interested candidates on the subject certification and should have been appointed in compliance with the "Rule of Three." Specifically, the appellants maintain that the appointing authority did not provide a proper "Statement of Reasons" with respect to the bypasses. The appellants assert that the appointing authority's reliance on the interview ratings was ambiguous, as the appointing authority did not indicate that the interviews constituted the primary justification for the bypasses and appointments. The appellants contend that the subject announcement for the position did not define or list the interview scoring

criteria, and as such, the appointing authority failed to provide the scope of requirements that the candidates were required to meet for an appointment. The appellants state that, although they were notified on August 9, 2022, that three vacancies were available for the subject position, the appointing authority did not provide notice of the scope of the interview questions to the candidates. The appellants maintain that, in effect, the appointing authority created a “secret eligibility requirement” when it failed to disclose the scope of the interview requirements; the interview categories; the description of each interview category; and the interview scoring system. In this regard, the appellants contend that the appointing authority essentially created a “secret eligibility requirement” in order to bypass them, which is impermissible. *See In re Hruska*, 375 N.J. Super. 202 (App. Div. 2005). The appellants add that the candidates’ interview scores do not reflect any notable discrepancies, which further diminishes the appointing authority’s rationale with respect to the bypasses. In addition, while the appellants acknowledge that interviews, in and of themselves, are a sufficient reason to bypass and make a hiring decision, they contend that, without more information, the appointing authority’s minimal justification for the bypasses are not adequate and fail to provide the required details to justify the bypasses. In this regard, the appellants maintain that the appointing authority was required to articulate its discretion to appoint the lower ranked candidates and for implementing the bypasses with as much detail as possible. The appellants contend that the appointing authority must “show cause” for the bypasses. *See Zigenfus v. Balentine*, 129 N.J.L. 215 (S.Ct 1942). Moreover, the appellants assert that, since they ranked higher on the subject certification, they are more suited for an appointment, and they question why the appointing authority weighed the interview scores higher than the scores they achieved on the subject examination.

In response, the appointing authority, represented by Adam S. Herman, Esq., asserts that the five candidates on the subject list, including the appellants, were interviewed on November 9, 2022, by a three-member interview committee. The appointing authority contends that the three-member interview panel based the interview questions on 10 categories, including appearance; interpersonal skills; verbal expressions; poise; ability to communicate ideas; enthusiasm; demonstration of relevant professional/technical knowledge of subject matter; work in similar job/program; understanding of procedures; and experience relevant to the position. The committee listed the candidates as “highly recommended” and “recommended.” The appointing authority explains that the three-member committee presented interview questions to the appellants, assessed their answers, and assigned scores and ratings based on the responses. The appointing authority explains that Spencer, Hood, and Smith scored higher than the appellants in response to the interview questions, and based on the interview ratings, it used its discretion under the Rule of Three to bypass the appellants. The appointing authority adds that the appellants’ appearance on the subject certification did not guarantee them an appointment. Moreover, the appointing authority maintains that, since the lower ranked

candidates achieved higher scoring ratings in response to the interview questions, their appointments are in compliance with the Rule of Three.

Additionally, the appointing authority maintains that a Statement of Reasons is not required. *See N.J.A.C. 4A:4-4.8*. The appointing authority argues that its presentation that the appellants did not perform as well as the lower ranked candidates with respect to the interview scores is sufficient to justify the bypasses. Moreover, the appointing authority maintains that it utilized the interviews to determine the best suited candidate in compliance with the Rule of Three. The appointing authority argues that the appellants' reliance on *In re Hruska, supra*, is misplaced, as the court in that matter did not analyze the adequacy of the Statement of Reasons, nor the candidates' interview results; rather, it determined that the appointing authority could not consider a "secret eligibility requirement" by requiring the candidates to fulfill requirements that were not listed in the announcement. The appointing authority argues that the interviews in this matter did not constitute a "secret" eligibility requirement, but rather, the appointing authority utilized the interviews to assist it in deciding the candidates to appoint from the subject list. Moreover, the appointing authority argues that the appellants' reliance on *Zigenfus, supra*, does not support their contentions. It explains that, in that matter, the appellant was bypassed despite that he was a veteran and the number one ranked candidate, and the appointing authority did not "show cause" with respect to the bypass. The appointing authority explains that the appellants in this matter are not veterans, and it submitted its reasons for the bypasses in this matter in accordance with Civil Service law and rules.

## 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. 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 properly utilized, an appointing authority's discretion 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). *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 appellants argue that the appointing authority did not provide a proper "Statement of Reasons" to justify the bypasses. The appointing authority argues that it did not have to provide a "Statement of Reasons." Initially,

the appellants' argument with respect to *Zigenfus, supra*, is misplaced. In this regard, in *Jamison v. Rockaway Township Board of Education*, 242 N.J. Super. 436 (App. Div. 1990), the standard was set that the appointing authority must articulate a legitimate reason for a candidate's bypass after the appellant provides a *prima facie* case. Thereafter, in *In the Matter of Nicholas R. Foglio*, 207 N.J. 38 (2011), the Supreme Court of New Jersey held that, as bypassing a higher-ranked eligible is facially inconsistent with principles of merit and fitness, the appointing authority must justify its selection of a lower-ranked eligible with a specific reason. The Court viewed the appointing authority's stated reason as "boilerplate" and remanded the matter back to the Civil Service Commission (Commission) so that the appointing authority could supply a "proper statement of reasons" for the bypass. An appellant would then have an opportunity to make a showing before the Commission that the appointing authority's action was arbitrary. In response to *Foglio*, an amendment to N.J.A.C. 4A:4-4.8 was approved which deleted the requirement under paragraph (b)4 that an appointing authority needed to provide a statement of reasons for a bypass at the time of the disposition of a certification. A review of the rationale in approving this amendment indicates that this was not intended to stop the review of a candidate's bypass. Instead, it was determined that the best time for the Commission to review a bypass was when an eligible files an appeal of that action as the eligible has communicated the basis for the challenge allowing the appointing authority to then provide an explanation for the bypass. Should an appointing authority fail to provide a reason in the context of such an appeal, it is presumed that an appellant, with just the barest evidence, would be considered to have presented a *prima facie* case, as that evidence would be unrefuted. In this matter, the appointing authority was required to submit within the context of this appeal a legitimate reason for its bypasses of the appellants. As such, the only thing that has changed is the timing as to when the appointing authority was required to submit this reason. With respect to the appellants' arguments that the appointing authority did not notify them that the structured interviews were the basis for their bypasses, the appointing authority was not obligated to provide the appellants with the reasons why the lower-ranked eligibles were appointed. See *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I. ii; AFL-CIO v. Division of Motor Vehicles*, 262 N.J. Super. 598 (App. Div. 1993). In this regard, in the context of this appeal, the appellants had the opportunity to learn the reasons for the bypasses and to dispute those reasons. As will be discussed more fully below, the Commission finds that the appointing authority's explanation pertaining to the interview process justifies the bypasses.

In this matter, the appellants have provided no substantial evidence to show that the bypasses based on the structured interviews were improper. In this regard, the appellants have not rebutted the appointing authority's assertions that it selected the candidates who scored the highest during the structured interview process. The use of a panel of interviewers familiar with the position and the assignment of numerical scores in a number of categories related to the position is a permissible way for the appointing authority to make a hiring decision, so long as that hiring

decision is in compliance with *N.J.A.C.* 4A:4-4.8(a)3. It is within an appointing authority's discretion to choose its selection method, which, in this case, was a structured interview. In this regard, appointing authorities are permitted to develop and utilize objective standards in order to determine how to use that discretion. Additionally, appointing authorities are permitted to interview candidates and base their hiring decisions on the interview. *See e.g., In the Matter of Wayne Rocco*, Docket No. A-2573-05T1 (App. Div. April 9, 2007) (Appellate Division determined that it was appropriate for an appointing authority to utilize an oral examination/interview process when selecting candidates for promotion); *In the Matter of Paul Mikolas* (MSB, decided August 11, 2004) (Structured interview utilized by appointing authority that resulted in the bypass of a higher ranked eligible was based on the objective assessment of the candidates' qualifications and not in violation of the Rule of Three).

With respect to the appellants' arguments regarding *In re Hruska, supra*, the facts of this matter are distinguishable, as the Court in that matter did not determine that a "secret eligibility requirement" was created based on candidate interview performances or the appointing authority's Statement of Reasons. Contrary to the appellants' claims in this matter that the structured interviews created a "secret eligibility requirement," there is no Civil Service law or rule that requires an appointing authority to list its interview scoring criteria in Civil Service examination announcements. As such, the structured interviews have no bearing on Civil Service examination announcements. As noted above, structured interviews are permitted in furtherance of the appointment process, and although the appellants may object to the appointing authority's method of conducting interviews in this matter, the appointing authority was entitled to use that process to determine the best suited candidates for appointment. 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). The Commission has reviewed this matter and does not find any evidence that the appellants were bypassed for an invidious or unlawful reason. Absent evidence that the appointing authority conducted the structured interviews with invidious intent, the appellants have not established their burden of proof with respect to the interviews in this matter.

Finally, although the appellants argue that they ranked higher on the subject certification as a result of their examination scores, such information does not entitle the appellants to an appointment. The appellants do 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 appellants have not presented any substantive evidence regarding their bypasses that would cause the Commission to conclude that the bypasses were improper or an abuse of the appointing authority's discretion under

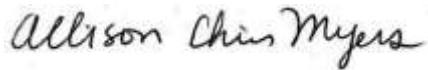
the Rule of Three. Moreover, the appointing authority presented legitimate reasons for the bypasses, which have not been persuasively refuted. Accordingly, a thorough review of the record indicates that the appointing authority's bypasses of the appellants' names on the Personnel Aide (PM0395D), Jersey City School District eligible list was proper, and the appellants have not sustained their 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 22<sup>ND</sup> DAY OF NOVEMBER, 2023



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