



**STATE OF NEW JERSEY**

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

In the Matter of John Uka, Social  
Work Supervisor 3, Psychiatric  
(PS8364H), Ancora Psychiatric  
Hospital

Bypass Appeal

CSC Docket No. 2024-1578

**ISSUED:** August 14, 2024 (EG)

John Uka appeals the bypass of his name on the Social Work Supervisor 3, Psychiatric (PS8364H), Ancora Psychiatric Hospital eligible list.

By way of background, the appellant appeared as a non-veteran eligible on the subject eligible list, which promulgated on March 30, 2023, with six eligibles and expires on March 29, 2026. A certification (PS232355) with four eligibles was issued on October 30, 2023, with the appellant listed in the first position. In disposing of the certification, the appointing authority bypassed the appellant and the eligible in the second position and appointed the eligible in the third position.

On appeal to the Civil Service Commission (Commission), the appellant argues that his bypass was not warranted as he was number one on the list. Further, he asserts that it was his understanding that there were three positions available, and he does not understand how he was not appointed to one of them.

In response, the appointing authority argues that it properly exercised its discretion under the "Rule of Three" to appoint the candidate it deemed most qualified. Specifically, it stated that the appellant scored third on the interview of the three candidates interviewed. The interviewers noted that the appellant lacked supervisory experience and his responses were not from a supervisor's point of view.

In reply, the appellant contends that supervisory experience was not indicated as required experience. He also reiterates his prior assertion that since three positions were advertised as open, he should have received one of those 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 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). Additionally, it is noted that the appellant has the burden of proof in this matter. See *N.J.A.C.* 4A:2-1.4(c).

Initially, it is noted that the appointing authority only appointed one eligible from the subject certification. Although the vacancy announcement may have listed three open positions, the appointing authority was not required to appoint three eligibles from the subject certification.


In the instant matter, the appellant has objected to being bypassed for appointment. However, he has not provided any evidence or arguments asserting that his bypass was improper in any way. The appointing authority asserts that it properly exercised its discretion under the “Rule of Three” to appoint the candidate it deemed most qualified, and it provided arguments and evidence in support of its contentions. In this regard, the appellant has not rebutted the appointing authority’s assertions and there is no 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.” Moreover, the fact that supervisory experience was not required to be eligible to apply for the position, does not mean that supervisory experience could not be used as part of the selection process in ranking candidates’ suitability for the position. Furthermore, the Commission notes that 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, a thorough review of the record indicates that the appointing authority’s bypass of the appellant’s name on the Social Work Supervisor 3, Psychiatric (PS8364H), Ancora Psychiatric Hospital 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 14<sup>TH</sup> DAY OF AUGUST, 2024



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