



**STATE OF NEW JERSEY**

In the Matter of Jeana Abuan,  
Assistant Business Administrator  
(PM4185D), Jersey City

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

CSC Docket No. 2024-2297

Bypass Appeal

**ISSUED: November 27, 2024 (HS)**

Jeana Abuan appeals the bypass of her name on the Assistant Business Administrator (PM4185D), Jersey City, eligible list.

As background, the subject examination was announced with a closing date of June 21, 2022 and was open to Department of Administration employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in any competitive title and met the open competitive requirements. The appellant appeared as the first ranked non-veteran eligible on the resulting eligible list, which promulgated on March 23, 2023 with the names of two non-veteran eligibles and expires on March 22, 2025. A certification, consisting of the names of both eligibles, was issued on October 11, 2023 (PL231972) with the appellant listed in the first position. In disposing of the certification, the appointing authority bypassed the appellant and appointed, effective January 11, 2024, K.L.

On appeal to the Civil Service Commission (Commission), the appellant questions the fairness of her bypass and the announcement of an open competitive examination on February 1, 2024 for the same title (M0181F) as she maintains that there is an expanded field of candidates. The appellant also points to budget hearings where the appointing authority discussed Assistant Business Administrator vacancies.

In response, the appointing authority maintains that it properly appointed the provisional employee, K.L., permanently in accordance with the "Rule of Three." See

*N.J.A.C.* 4A:4-4.8(a)3. Regarding concerns about a fair process, the appointing authority indicates that it has an established committee comprising managers and department heads to review permanent Civil Service appointments. This committee reviews each eligible candidate's job responsibilities and qualifications. As to the M0181F announcement, the appointing authority argues that this was an open competitive process in accordance with Civil Service regulations. *See N.J.A.C.* 4A:4-2.3(a)2. It maintains that although the appellant states that there is an expanded field of candidates, PM4185D yielded only two eligibles. Additionally, comments made by the appointing authority regarding vacancies are in line with budgetary requests to the governing body and are subject to change based on numerous conditions.

In reply, the appellant requests that her bypass be reconsidered and that she be permanently appointed, considering that there are, she claims, employees serving provisionally in the title of Assistant Business Administrator who may have not passed, filed for, or qualified for the examination, while she has numerous qualifications. She indicates that she intends no adverse impact to be brought upon the employment and salaries of those employees currently working as Assistant Business Administrators.<sup>1</sup> The appellant asks that the M0181F open competitive examination be waived or held until the PM4185D promotional eligible list is exhausted. She contends that since a promotional list takes priority over an open competitive eligible list under Civil Service regulations, the promotional list must be exhausted first via her appointment. The appellant further cites the principle of "promotion from within" and calls for the advancement of a qualified eligible municipal employee (herself) through the Jersey City "Grow Forward Program," which provides current employees an opportunity to apply for an open position within their Division/Department. It is noted that the appointing authority's website describes the "Grow Forward Program" as follows:

The Grow Forward Program provides current Jersey City employees an opportunity to apply for an open position that is within or outside of their Division/Department. The program offers employees a chance to learn more about the operations of the City while also aiding in the growth of their knowledge and experience. These opportunities are announced internally through a "Grow Forward Announcement" and posted externally on the City's website in the "Jobs" section. Hence, current positions listed . . . are only open for current Jersey City employees with a specific deadline for employees to apply.

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<sup>1</sup> However, a review of official personnel records found in the County and Municipal Personnel System indicates that there is no one serving provisionally in the title of Assistant Business Administrator with the appointing authority.

## 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, it is noted that the appellant has the burden of proof in this matter. See *N.J.A.C.* 4A:2-1.4(c).

Since only non-veterans were listed on the certification, it was within the appointing authority's discretion to select any of the top three interested eligibles on the certification. The former Merit System Board has found that provisional experience of lower-ranked eligibles is valuable and should not be overlooked in the selection process. See *In the Matter of Mahasen Adra-Halwani* (MSB, decided October 5, 2005). Thus, it is reasonable that if he was reachable under the "Rule of Three," the appointing authority would want to permanently appoint its provisional appointee. See *In the Matter of Terrence Crowder* (CSC, decided April 15, 2009).

Additionally, even assuming, *arguendo*, that the appellant is more qualified for the position at issue, the appointing authority still has selection discretion under the "Rule of Three" to appoint a lower-ranked eligible absent any *unlawful* motive. See *N.J.A.C.* 4A:4-4.8(a)3; *In the Matter of Nicholas R. Foglio, Fire Fighter (M2246D)*, *Ocean City*, 207 *N.J.* 38, 49 (2011). 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, the appellant does not possess a vested property interest in the position. In this regard, 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 her 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 appointing authority presented a legitimate reason for the appellant's bypass that has not been persuasively refuted. Accordingly, a review of the record indicates that the appointing authority's bypass of the appellant's name was proper, and the appellant has not met her burden of proof on that issue.

The Commission declines to place a hold on the M0181F open competitive examination as that examination was properly announced in accordance with Civil Service regulations. See *N.J.A.C.* 4A:4-2.3(a)2 (open competitive examination may be announced where there are fewer than three qualified permanent employees in appropriate lower titles in the unit scope). Specifically, the PM4185D promotional examination was open to, in pertinent part, employees who met the open competitive requirements, not an in-series title. See *N.J.A.C.* 4A:4-2.4. Moreover, it yielded an eligible list of only two names.

Concerning the priority of eligible lists, the appellant correctly notes that when there is more than one current eligible list for a title, the promotional list has priority over the open competitive list. *See N.J.A.C. 4A:4-3.7*. However, this priority does not necessarily mean that an appointing authority is thereby compelled to make a permanent appointment from the promotional list. That is the case in this particular situation. Since there is only one name remaining on the PM4185D list, the appointing authority is under no obligation to make a permanent appointment off that list. *See N.J.A.C. 4A:4-4.2(c)2*.

Finally, it is clear that the “Grow Forward Program” pertains to vacancy postings that are initiated by the appointing authority and that are not monitored by this agency. Further, there is no evidence in the record that the “Grow Forward Program” requires the Commission to grant the appellant any of her sought-after remedies 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 27<sup>TH</sup> DAY OF NOVEMBER, 2024




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