



STATE OF NEW JERSEY

In the Matters of Calvin Anderson,
East Orange

**DECISION OF THE
CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2024-181 and
2024-1294

Administrative Appeal
Bypass Appeal
Hearing Granted

ISSUED: December 18, 2024 (HS)

Calvin Anderson appeals the appointment of Maurice Boyd to the unclassified title of Director of Public Safety with East Orange. Additionally, the appellant, represented by Patrick P. Toscano, Jr., appeals the bypass of his name on the Deputy Police Chief (PM2303E), East Orange, eligible list. These appeals have been consolidated herein.

As background, the County and Municipal Personnel System (CAMPS) indicates that Boyd was serving permanently in the title of Police Captain with East Orange. Effective December 8, 2022, Boyd was placed on a leave of absence from his Police Captain title and received an appointment to the unclassified title of Director of Public Safety. Effective March 31, 2024, Boyd returned to the title of Police Captain from his leave of absence. Effective April 1, 2024, Boyd separated from service with East Orange due to retirement. Per CAMPS, these transactions were entered into the system with this agency's approval.

Additionally, the appellant, L.M., and C.L. were serving permanently in the title of Police Captain. Effective December 8, 2022, they received provisional appointments, pending promotional examination procedures, to the Deputy Police Chief title. Subsequently, the appellant appeared as the first ranked non-veteran eligible on the subject eligible list, which promulgated on August 17, 2023 and expires on August 16, 2026. A certification, consisting of the names of seven non-veteran eligibles, was issued on August 21, 2023 (PL231580) with the appellant listed in the first position. In disposing of the certification, the appointing authority, in pertinent

part, bypassed the appellant and appointed, effective November 17, 2023, K.G. and R.G., respectively, the second and third listed eligibles. The appellant, L.M., and C.L. were returned to their permanent title of Police Captain, also effective November 17, 2023. The disposition of certification PL231580 was recorded by this agency on November 21, 2023.

Administrative Appeal

In his administrative appeal to the Civil Service Commission (Commission), the appellant requests that Boyd's appointment to Director of Public Safety be rescinded and that he be returned to the title of Police Captain.

Bypass Appeal

In his bypass appeal to the Commission, sent December 4, 2023 via FedEx, the appellant maintains that he was bypassed for having properly initiated two lawsuits against East Orange in Essex County Civil Court on October 30, 2017 and December 10, 2020, respectively; submitting three hostile working environment complaints dated June 13, 2022, August 10, 2022, and March 28, 2023, respectively, which were never investigated; and making, beginning in June 2023, Open Public Records Act (OPRA) requests relating to Boyd's employment. The appellant explains that one of the hostile working environment complaints, specifically that filed March 28, 2023, pertained to East Orange's alleged reassignment of personnel placing 224 officers and civilians under his command out of the 282 personnel in the agency, upon the announcement of the subject examination. The appellant maintains that he filed the complaint in part because of the "suffocating" responsibility foisted upon him in comparison to the other provisional Deputy Police Chiefs. In that regard, L.M. and C.L. were assigned 48 and 10 personnel, respectively. He alleges that he was given this additional responsibility to make it difficult, if not pragmatically impossible, to study and perform well on the examination. The appellant insists that he was illegally bypassed even though a third Deputy Police Chief position was and remains vacant. Specifically, he points to a November 22, 2023, personnel order detailing the areas of responsibility for Deputy Police Chiefs K.G. and R.G. The Patrol Division was not listed. Per K.G., supervision of the Patrol Division is to be shared between the two Deputy Police Chiefs. The appellant states that since the appointment of the provisional Deputy Police Chiefs, the Patrol Division had been supervised by a single Deputy Police Chief due to its complexity and workload. He contends that splitting the supervision responsibilities of the Patrol Division clearly evinces an immediate need for a third Deputy Police Chief. In support, the appellant submits copies of his hostile working environment complaints; the Essex County Civil Court Case Docket indicating his lawsuits; and other documents.

In response, East Orange, represented by Marlin G. Townes, III, Esq., initially contends that the instant appeal is untimely because the appellant was notified by e-

mail on November 6, 2023, that he had not been selected, yet the appeal was not filed until more than 20 days later. On the merits, East Orange states that in light of the close scores on the eligible list, it decided to conduct interviews of the top four candidates (appellant, K.G., R.G., and C.L.) to assist in the selection process. The final list of interview questions was circulated to the four candidates prior to their interviews. The Office of the City Corporation Counsel also created a scoring rubric sheet for the interviewers to fill out during the interview process. During each interview, the interview committee, comprising of the Mayor, Chief of Staff, Business Administrator, and Corporation Counsel, posed the same questions to each candidate. This included the questions that were previously circulated as well as others that arose on the day of the interviews. Contemporaneous with the interviews, each interviewer filled out the rubric and scored the performance of each candidate. East Orange maintains that based on the current needs of the Police Department, it exercised its managerial prerogative to promote two Deputy Police Chiefs. The two candidates with the highest scores from the interview process, K.G. and R.G., were selected for promotion. In support, East Orange submits, among other things, the Corporation Counsel's certification to which is attached the circulated interview questions and the scoring sheets.

In reply, the appellant contends that if the interviewers created questions as they conducted the interviews, then the same questions could not have been asked of all four candidates. He also notes that he was *not* asked the following two questions that appear on his scoring sheets: (1) reason given why candidate is most qualified and (2) intangible leadership quality expressed. However, he received scores from all four interviewers for both questions. The appellant also maintains that he was asked the following questions that were not listed on the scoring sheets and was not given a score:

1. "Describe your leadership style."
2. "What might you see as the biggest problem in the police department, and what would you do to correct or cure it?"
3. "What would be your analogy of that situation – just very brief, what – what would you do in terms of how we're putting a Band-Aid – just removing one car until another complain, back to that what that lady said? What would be a disapproval or what would you do to put a plan together?"

The appellant further claims that during the interview, he did not observe the Chief of Staff or Business Administrator possess the scoring rubric sheet, nor did he observe them score or check off any documents. Thus, he proffers that the interview scores were invalid and false. In support, he submits, among other things, a recording of his interview.

In reply, East Orange maintains that during the course of the candidates' interviews, the interview committee asked explicit questions on the scoring rubric and other questions that allowed it to elicit responses pertinent to the topics included in the scoring rubric. Specifically, the interview committee posed questions, which afforded opportunities for the appellant to demonstrate why he was the most qualified candidate and to express his intangible leadership qualities. Each question was asked with an eye towards gaining an understanding of the appellant's leadership skills. In fact, the Mayor specifically asked the appellant to describe his leadership style. East Orange insists that the appellant was given ample opportunity to provide responses to all areas on the scoring rubric. In support, East Orange submits the Business Administrator's certification to which is attached the audio and transcript of the appellant's interview.

In reply, the appellant argues that East Orange has made a contradiction in terms by stating that it "asked explicit questions on the scoring rubric" while further referring to "topics included in the scoring rubric." The contradiction exists as East Orange refers to the questions on the scoring rubric as "specific questions" and, in the same statement, refers to the same questions on the scoring rubric as "topics." The appellant proffers that questions are specific in nature, and topics are general. When a question is asked, specific and detailed information is given by the person asking. When topics of discussion are posed, the general subjects are given, which leaves room for a general response. East Orange, per the appellant, aims to blur the lines between questions and topics; specific and general; and what should be asked and what can be inferred, to explain the absence of questions which, by all accounts, were stated to be asked. He highlights the following statement by the Corporation Counsel during his interview:

So we've given you a set of questions; the questions we'll ask is primarily from this list. We're not asking (inaudible) questions, but we'll ask the questions from this list. Ask that you answer questions fully as you can, as best as you can. We won't explain the question, but we will repeat it if you need that to be done.

The appellant maintains that the Corporation Counsel clearly states above that the questions will be asked "primarily from [a] list," not a discussion of general topics. Referring to the Corporation Counsel's own certification discussed earlier, the appellant posits that at no time does the Corporation Counsel classify the questions as general topics for discussion and that some questions were not to be asked but assumed or conclusions derived from the collective questions.

The appellant reiterates that there can be no dispute that the following questions were not asked: (1) reason given why candidate is most qualified and (2) intangible leadership quality expressed. He states that the first of these missing questions corresponds to the following question that had been circulated to the

candidates prior to the interviews: “What skills and abilities qualify you to be a Deputy Chief of Police in the City of East Orange? Explain in detail why you are the most qualified candidate for the position.” The word “given,” he proffers, indicates that the information has to be provided by the candidate. Therefore, the appellant argues, for the interviewers to receive the information as to why he is the most qualified candidate, the question must be asked. This information cannot be guessed or assumed by the interviewer because the question is based on the opinion of the candidate. As the question or nothing similar was asked, no answer or conclusion could have been found allowing the interviewers to reach a conclusion and a score. Concerning the second of the missing questions, the appellant rejects East Orange’s highlighting that the Mayor had specifically asked the appellant to describe his “leadership style.” Rather, he insists that “leadership style” and “leadership qualities” are not the same thing. Thus, the appellant argues, one answer cannot be derived from another. In support, the appellant submits a Harvard Business Review article and other documents.¹

CONCLUSION

Administrative Appeal

According to CAMPS, Boyd returned to the title of Police Captain from his approved unclassified Director of Public Safety appointment and separated from service with East Orange. Accordingly, this appeal is moot.

Bypass Appeal

Initially, *N.J.A.C.* 4A:2-1.1(b) states 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. The disposition of certification PL231580 was not recorded by this agency until November 21, 2023, and the appeal was sent 13 days later via FedEx on December 4, 2023. Under these circumstances, the Commission accepts the appeal as timely filed and proceeds to the merits.

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

¹ The appellant also demanded that East Orange disclose a report prepared by an outside entity, the Ambrose Group, that allegedly recommended that the appellant be promoted. East Orange, insisting on the report’s privileged nature, declined to do so. Regarding this dispute, the Commission offers only the following brief comments at this juncture. Even assuming the outside entity had made the referenced recommendation, an appointing authority would still have selection discretion under the “Rule of Three” to bypass an eligible absent any unlawful motive, notwithstanding the outside entity’s recommendation. 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).

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)*.

In cases of this nature 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*, 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. In a case such as this, where the adverse action is failure to promote, the employer would then have the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.

In this matter, the appellant appeared as the first listed eligible on the certification. K.G. and R.G. were the second and third listed eligibles respectively. The appellant contends that he was bypassed for having filed two lawsuits against East Orange; three hostile working environment complaints; and OPRA requests relating to Boyd's employment. East Orange responds that the appointees were selected based on their relative interview scores. Specifically, it maintains, among other things, that during the course of the interview, the interview committee asked explicit questions on the scoring rubric and posed questions that afforded opportunities for the appellant to demonstrate why he was the most qualified candidate.

The appellant disagrees and notes that the final list of interview questions was circulated to the candidates prior to their interviews. The list included the following question: "What skills and abilities qualify you to be a Deputy Chief of Police in the City of East Orange? Explain in detail why you are the most qualified candidate for the position." The appellant also highlights the following statement by the Corporation Counsel during his interview:

So we've given you a set of questions; the questions we'll ask is primarily from this list. We're not asking (inaudible) questions, but we'll ask the questions from this list. Ask that you answer questions fully as you can,

as best as you can. We won't explain the question, but we will repeat it if you need that to be done.

A review of the transcript of the appellant's interview finds that the following question was never posed to him: "What skills and abilities qualify you to be a Deputy Chief of Police in the City of East Orange? Explain in detail why you are the most qualified candidate for the position." Yet, the appellant's interview scoring sheets include scores for the following item: "reason given why candidate is most qualified." This alone leaves a material fact issue as to the basis for the candidates' interview scores. Moreover, East Orange has provided no other substantive response to the appellant's allegations that his bypass was retaliatory.

Based on the foregoing, a material dispute of fact exists in this matter regarding the reason for the appellant's bypass on the certification. Accordingly, under these circumstances, where it is not possible to determine on the written record whether the reason for this action was proper, this matter should be referred to the Office of Administrative Law for a hearing.

ORDER WITH RESPECT TO ADMINISTRATIVE APPEAL
CSC Docket No. 2024-181


It is ordered that this appeal be dismissed as moot.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

ORDER WITH RESPECT TO BYPASS APPEAL
CSC Docket No. 2024-1294

It is ordered that this matter be referred to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF DECEMBER, 2024



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