



STATE OF NEW JERSEY

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

In the Matter of Robin Gonzalez,
Human Services Specialist 4
(PC4857C), Monmouth County

List Bypass Appeal

CSC Docket No. 2023-575

ISSUED: April 10, 2024 (EG)

Robin Gonzalez appeals the bypass of her name on the Human Services Specialist 4 (PC4857C), Monmouth County, eligible list.

By way of background, the appellant appeared as the seventh ranked non-veteran eligible on the subject eligible list, which promulgated on May 12, 2022, with 27 eligibles and expires on May 11, 2024. A certification of 22 eligibles was issued on May 16, 2022 (PL220731) with the appellant listed in the seventh position. In disposing of the certification, the appointing authority bypassed the appellant, removed the first ranked non-veteran eligible, listed the fifth ranked eligible as retained not interested in an appointment at this time, bypassed the ninth ranked eligible, and appointed eligibles two, three, four, six, eight and 10 effective August 17, 2022. The remaining eligibles were not reachable for appointment.

On appeal to the Civil Service Commission (Commission), the appellant argues that she was told by the appointing authority that the appointments were made strictly on the interview process, but it did not explain the scoring method or the rubric used. The appellant claims that basing appointments on the interview process is not a “merit based reason” for her bypass per Civil Service rules. Additionally, she asserts that she received a higher score on the promotional examination than the appointees ranked eighth and 10th. Further, she contends that she has almost 40 years of experience and that neither of the appointees ranked eighth and 10th are old

enough to have as much experience. Finally, she asserts that she has never been disciplined while the appointee in the 10th position has had disciplinary actions.

In response, the appointing authority argues that it followed the “Rule of Three” as outlined in *N.J.A.C.* 4A:4-4.8(a)3 in making appointments from the subject certification. In addition, it asserts that the appellant’s reference to the age of the appointees and her allegations of disciplinary action had no relevance to its selection process as it does not look at age or unfounded allegations when making its determinations. Further, the appointing authority contends that its selection process of utilizing interviews and work experience has previously been upheld by the Commission. It states that its process is fair and consistently applied. Moreover, the appointing authority argues that the appellant did not score as high as her colleagues, and therefore, was not selected for appointment. In support of its contention, the appointing authority submits the information used to evaluate each candidate, including resumes and scoring sheets for the interviews.

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, an appellant has the burden of proof in these matters. See *N.J.A.C.* 4A:2-1.4(c).

In the instant matter, the appellant has argued that she possessed more experience than those who were appointed below her. She also alleges that one of the appointees had a disciplinary history and she does not. The appointing authority has indicated that it selected the candidates for appointment who scored highest during the interview process, which included eligibles ranked below the appellant. In this regard, the appellant has not rebutted the appointing authority’s assertions, and a review of the scoring sheets reveal that the appointees ranked below the appellant had in fact achieved higher scores on the interview. The appellant merely argues that relying on an interview to select lower ranked eligibles is not a permissible “merit based reason” for her bypass under Civil Service rules. The Commission does not agree. Rather, appointing authorities are permitted to interview candidates and base their hiring decision 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 candidates' qualifications and not in violation of the "Rule of Three").

In addition, it is noted that the 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). 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 legitimate reasons for the appellant's bypass that have not been persuasively refuted. Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the Human Services Specialist 4 (PC4857C), Monmouth County, eligible list was proper, and the appellant has failed to meet her 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 10TH DAY OF APRIL, 2024



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