



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Dylan S. Barsony,
Police Officer (M0161D), Voorhees
Township

CSC Docket No. 2024-238

List Bypass Appeal
Hearing Granted

ISSUED: May 1, 2024 (KMG)

Dylan S. Barsony appeals the bypass of his name on the Police Officer (M0161D), Voorhees Township (Voorhees), eligible list.

The subject eligible list promulgated on November 10, 2022 and expires on November 9, 2023. The appellant appeared as the third ranked non-veteran eligible. A certification consisting of 12 names was issued on November 23, 2022 (OL221434). In disposing of the certification, Voorhees appointed D.G. and E.E., the first and seventh ranked eligibles respectively, effective February 13, 2023, and bypassed the appellant.

On appeal to the Civil Service Commission, the appellant proffers that Voorhees bypassed him to hire D.G. and E.E. for diversity purposes. Specifically, he maintains that his current chief had called Voorhees and inquired about him being hired, and was told that although the appellant interviewed well, due to “diversity reasons” it needed to hire two other candidates. The appellant also contends that he has been provided no reason for his bypass from Voorhees. The appellant asserts that he had been certified to Voorhees in 2019, was interviewed, and was assured that he would have been hired at that time, but it did not have another vacancy. Finally, the appellant notes that for this certification, he was not interviewed, and he was not provided with any formal notice as to why he was not appointed.

Despite an opportunity to do so, Voorhees has not submitted a response in this matter.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-6, and *N.J.A.C.* 4A:4-4.8(a)3i (“Rule of Three”) allow an appointing authority to select any of the top three interested eligibles from an open competitive list, provided that disabled veterans and then veterans shall be appointed in their order of ranking. 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 an alternative motive is asserted for an employer’s actions, an analysis of the competing justifications to ascertain the actual reason underlying the actions is warranted. *See e.g., 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 third ranked eligible on the certification. D.G. was ranked first, and E.E. was ranked seventh. The appellant claims his bypass was discriminatory as the appointments of both D.G. and E.E. were for “diversity reasons.” Despite the opportunity to do so, the appointing authority has failed to provide any reason for the bypass of the appellant, nor has it responded to the instant appeal. Based on the foregoing, material disputes of fact exist in this matter regarding the reasons for the bypass and non-appointment of the appellant, on the subject certification. Accordingly, under these circumstances, where it is not possible to determine on the written record whether the reasons for these actions were proper, this matter should be referred to the Office of Administrative Law for a hearing as a contested case.

ORDER

Therefore, 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 1ST DAY OF MAY, 2024



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