



**STATE OF NEW JERSEY**

In the Matter of Travis Nicol,  
Supervising Public Safety  
Telecommunicator (PC1768A), Ocean  
County Sheriff's Office

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

CSC Docket No. 2024-1449

List Bypass Appeal

**ISSUED: May 1, 2024 (SLK)**

Travis Nicol<sup>1</sup> appeals the bypass of his name on the Supervising Public Safety Telecommunicator (PC1768A), Ocean County Sheriff's Office, eligible list.

By way of background, the appellant appeared in the fourth rank on the subject eligible list, which promulgated on August 12, 2021, and expires on August 11, 2024. The appellant's name was certified on October 11, 2023 (PL231976). A total of six names were certified. The second positioned candidate was the appellant, and he was bypassed along with the first positioned candidate. The third positioned candidate was appointed, the fourth positioned candidate was removed, the fifth positioned candidate was retained as only interested in future certifications, and the sixth positioned candidate was appointed. The appointments were effective December 21, 2023.

On appeal to the Civil Service Commission (Commission), the appellant states that although he was advised that he was not appointed due to his work ethic, when he questioned management, it did not provide him with any issues regarding his work ethic and it was acknowledged that his alleged poor work ethic was not documented. He highlights that he has been employed in the communications division for 14 years, including six years as a Senior Public Safety Telecommunicator, and he has no disciplinary history. The appellant asserts that he is an exemplary and loyal

<sup>1</sup> It is noted that the appellant has been a Senior Public Safety Telecommunicator with the Ocean County Sheriff's Office since 2010.

employee, and whenever the Chief Public Safety Telecommunicator (Chief) requests that he trains a new employee, he drops his plans and starts working at 8:00 a.m. even if he just completed a midnight shift. He presents that he has trained and retrained employees on taking calls concerning the police, fire/emergency management services, and the mobile command unit. The appellant also states that he has worked 16 hours on every holiday so that his coworkers on other shifts have the chance to have the day off. Further, he claims that he has done personal favors for the Chief, such as walking the Chief's dogs while the Chief is on vacation, because he felt obligated to do so. The appellant notes that he has participated in countless "ride alongs" with new hires to show them the county. He indicates that at the last minute, he was asked to read the Lakewood Captain's final call-in in front of hundreds of people who were in attendance. The appellant states that he took initiative to calculate all the forces for the year and he requested to go downtown to the warrants unit to learn how to properly enter CAD warrants, and better understand the codes and when they are used. He provides that he has worked 509 hours of overtime this year to date and has attended events with the Sheriff to support the department.

Moreover, the appellant asserts that he is responsible and reliable as he is never late for work and had perfect attendance for 31 months from July 2019 to February 2022. He states that he works well with his coworkers and is honest, dedicated, and hard working as he has given his all to the department. Therefore, it was a "shock" to him when he was bypassed for reasons that the department cannot support. The appellant claims that the third positioned candidate who was appointed is the one with a bad work ethic, as he has a disciplinary record which includes a suspension for sleeping on the job. Further, he alleges that the third positioned candidate calls out sick when he is needed; and when working overtime, he logs into all systems but walks around chatting with coworkers. The appellant also states that the first positioned candidate was appropriately bypassed as that candidate had employment issues and was suspended.

Furthermore, the appellant believes that he was bypassed due to personal or retaliatory reasons. Specifically, he presents that his wife is a union shop steward for the communications division. The appellant indicates that his wife has submitted many complaints due to retaliation/discrimination and harassment against her because she is the shop steward. He notes that his wife has had these issues for the past year, and she has submitted complaints to management and employee relations. The appellant claims that the Chief told one of the supervisors that he will never get promoted so long as his "bitch wife is the steward." He states that during his interview for the Supervising Public Safety Telecommunicator position, he was questioned how his wife's involvement in the union impacts his ability to be a supervisor, which he thinks was an inappropriate question as his wife's union involvement has nothing to do with him being a supervisor. Further, when he emailed management asking what he could do to better himself so that he could one day become a supervisor, he did not receive a response. Moreover, when he asked his

supervisor why he was bypassed, his supervisor responded, “you didn’t kiss enough ass.” The appellant claims that he has two witnesses regarding his supervisor’s statement.

Additionally, the appellant contends that he was “sabotaged from the start of the interview process” as the Chief texted him on Friday, December 1, 2023 stating, “We are doing interviews for supervisor on Tuesday after 3pm will get you better update when I have more.” However, he was never provided with any update or further information. The appellant feels that an unofficial text message is not a professional way to inform someone about a serious interview. He notes that the text was sent on Friday, and he is off on Sunday and Monday. The appellant explains that when he arrived at work at 4:00 p.m. on Tuesday, the other candidates were dressed in suits and ties as they had received emails on Monday regarding the interview. He indicates that he is not required to check emails on his days off. The appellant then logged into his email and the email stated that he was to interview at 3:45 p.m. on that day. Shortly thereafter, he was called in to interview and he felt unprepared and at a disadvantage.

In response, the appointing authority, represented by Robert D. Budesca, Esq., submits a memorandum from a Sheriff’s Officer Lieutenant (Lieutenant), a letter from the Chief, and a memorandum from a Supervising Public Safety Telecommunicator. It also presents that the interview panel consisted of the Sheriff, a Sheriff’s Officer Captain (Captain), the Lieutenant, and the Chief, and the panel concluded at the end of the interview process that it was not appropriate to promote the appellant.

In the Lieutenant’s letter to the Captain, he stated that while the appellant’s actions did not rise to the level of discipline, there were daily direct line of supervision actions. He indicates that in November/December 2023, the shift supervisor feedback provided that there were questions as to whether the appellant learns from guidance as he repeats matters; about his leadership when it came to managing his assigned area; and despite the appellant working lots of hours, the shift supervisors thought he was lazy. Further, the Lieutenant highlighted seven separate matters from the Fall 2020 through the Summer 2023 regarding the appellant, including chain of command issues, failing to report inappropriate behavior of a supervisor that he witnessed, and declining assignments. There were also concerns in the appellant’s annual employee evaluation regarding various work performance issues, inappropriate use of cell phones, watching television, and lack of productivity. Moreover, in response to these concerns during his interview, the appellant responded that when he refused training, he must have been exhausted and mentioned a concern of assignments by shift supervisors. He also disagreed with the claim regarding improper usage of chain of command issues. He believed that there were no conflicts between staff and there were only work-related matters. Concerning the claim that he was lazy, the appellant stated that his work was acceptable and others should “focus on their own work.”

Additionally, in his letter to the Captain, the Chief stated that the appellant's supervisor indicated that the appellant "was not working at an above average rate as a[n] operator and that of a[n] acting supervisor." Further, he indicated that when the appellant is assigned to the police desk, there are occasions when he is not paying attention to the operations or assisting with decisions, such as Sheriff call out/approvals. Moreover, the Chief presented that there were inappropriate conversations taking place on the floor, and the appellant would not intervene. Additionally, he provided that the appellant must be reminded to limit his breaks out of the room and focus on the job instead. The Chief indicated that since the appellant was informed that he was bypassed, he has chosen not to improve his skills or work ethic, and he needs to be reminded to answer the radios more, take on more assignments and partake in "supervisory matters, even when not in charge."

In his memorandum to the Chief, the Supervising Public Safety Telecommunicator presented various incidents with regard to the appellant, which he stated "were documented with personal meetings and emails to management," including verbal complaints by fellow operators regarding the appellant's lack of assistance, the appellant needing to be advised concerning production and being out of the room too often, and on his cell phone when working. Additionally, there were two incidents that were an hour apart where the Chief answered calls because the appellant did not answer; a conversation about errors the appellant made on a night that was not busy; an incident where the appellant changed his assignment on his own which led to the appellant giving "attitude" when the assignment was changed back; and a conversation regarding him logging in as a supervisor when it was his job to take calls.

Therefore, the appointing authority maintains that deference should be given to the conclusion reached by the panel that conducted the interview process.

## 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.

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*, *supra* 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.

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 record indicates that the appointing authority’s appointments complied with the “Rule of Three.” Specifically, while the appellant explains why he believes that he is an exemplary candidate, states that he has no disciplinary history, and asserts that the appointing authority did not document his alleged work ethic issues, in response to his appeal, the appointing authority presents numerous examples of a poor work ethic or performance exhibited by the appellant which are legitimate business reasons as to why the appellant was not appointed, which he did not dispute.

Further, the appellant alleges that his bypass was for personal reasons and/or his wife’s union activity. Specifically, he purports that the Chief told one of the supervisors that he will never get promoted so long as his “bitch wife is the steward.” The appellant also claims that his supervisor told him he was bypassed because “he didn’t kiss enough ass,” and he has two witnesses to his supervisor’s statement. However, he has not presented any evidence to support these claims, such as a witness statement or any other document that confirms his allegations or, at a minimum, persuade the Commission that the reasons for the appellant’s bypass may have been pretextual which may warrant a hearing on his appeal.

Additionally, the appellant states that he was questioned during his interview concerning how his wife’s involvement in the union impacts his ability to be a supervisor, which the appellant believes was inappropriate. However, it is noted that a supervisor recommends hiring, firing, and disciplining subordinate employees. *See In the Matter of Alexander Borovskis, et al.* (MSB, decided July 27, 2005). The appellant’s wife, as shop steward, might be involved in assisting a subordinate who

is facing an adverse employment action. Therefore, it is not inappropriate for the appointing authority to wonder how the appellant may act if he needs to take an action that his wife objects to in her position as shop steward. Moreover, the question gave the appellant the opportunity to put management's minds at ease regarding the potential conflict.

Finally, the appellant believes that his interview was sabotaged. He presents that the Chief texted him on Friday, December 1, 2023, indicating that interviews would be held on Tuesday after 3:00 p.m., and he would be given a better update when there was more information. The appellant provides that he was off on Sunday and Monday, and he is not expected to check his email while he is not working. Thereafter, when he arrived for work on Tuesday at 4:00 p.m., he saw that the other candidates were dressed professionally. The appellant then checked his email and saw that he had received an email on Monday informing him that he was scheduled to interview on Tuesday at 3:45 p.m. Therefore, he felt unprepared and disadvantaged during his interview. However, as the record indicates that the appellant was advised on the Friday before his Tuesday interview that he was scheduled for an interview on the next Tuesday, even though the appellant did not view the confirming email on Monday until he arrived at work on Tuesday, common sense dictates that the appellant should have been prepared to interview on Tuesday. Further, if the appellant was concerned that the Tuesday interview was not going to take place as advised or if he needed more information to be prepared, the appellant should have either replied back to the Chief some time before Tuesday or asked internally to confirm that the Tuesday interview was going to be conducted and ask for any information he may have needed.

In other words, there is no evidence in the record, other than mere speculation, that the appointing authority's decision to bypass the appellant was based on invidious or unlawful motivation. *See In the Matter of Chirag Patel* (CSC, decided June 7, 2017). Moreover, even assuming, *arguendo*, that the appellant is more qualified for the position at issue, as he presents his qualifications and alleges issues in the employment history of the other candidates and appointees, the appointing authority still has selection discretion under the "Rule of Three" absent any unlawful motive. In reviewing this matter, the Commission has not found that the appellant's bypass was due to invidious reasons. In addition, it is noted that the appellant does not possess a vested property interest in the position. *See In re Crowley, supra; Schroder v. Kiss, 74 N.J. Super. 229* (App. Div. 1962). 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).

Therefore, since the appellant's assertions are unsupported in the record, he has not established by a preponderance of the evidence a *prima facie* case as outlined above. Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the Supervising Public Safety

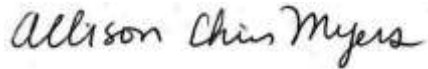
Telecommunicator (PC1768A), Ocean County Sheriff's Office, eligible list was proper, and the appellant has failed to meet his burden of proof in this matter.

**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 1<sup>ST</sup> DAY OF MAY, 2024



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