



STATE OF NEW JERSEY

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

In the Matter of Jean DiGuglielmo,
Personnel Assistant 1 (PS2577H),
Ancora Psychiatric Hospital

Bypass Appeal

CSC Docket No. 2024-1113

ISSUED: July 24, 2024 (EG)

Jean DiGuglielmo appeals the bypass of her name on the Personnel Assistant 1 (PS2577H), Ancora Psychiatric Hospital eligible list.

By way of background, the appellant appeared as a non-veteran eligible on the subject eligible list, which promulgated on August 31, 2023, with three eligibles and expires on August 30, 2025. A certification of three eligibles was issued on September 11, 2023 (PL231973) with the appellant tied for rank number one along with another candidate. In disposing of the certification, the appointing authority bypassed the appellant and appointed the other first ranked candidate and the candidate ranked third.

On appeal to the Civil Service Commission (Commission), the appellant asserts that she was interviewed by Nancy Bill, Manager 2 at Ancora, and Linda Cortright, Personnel Assistant 3 at the Department of Health's Central Office. She contends that she expected to be interviewed by members of upper management in a title higher than the one she was interviewing for. She claims that she was asked questions regarding her leadership skills, diversity, conflict management, confidentiality, and handling difficult employees, *etc.* The appellant argues that someone in a management position could score the candidates in a fair manner on the interview questions as they would have more experience in such matters. Additionally, the appellant adds that past practice at Ancora was that all vacancies were handled within its unit scope. Further, the appellant questions the speed at

which the eligible list was issued after the promotional announcement closed. The promotional announcement closed on July 21, 2023, and the list promulgated on August 31, 2023. She questions if there was sufficient time to properly review the candidates' applications. Moreover, the appellant alleges that one of the other candidates was a Technical Assistant Personnel with no degree and no professional experience to qualify for the subject title.

In response, the appointing authority argues that it properly exercised its discretion under the "Rule of Three" to appoint the candidates it deemed most qualified. It adds that Bill sought assistance from the Central Office in having someone from their office as part of the interview panel in an effort to make it a fair interview for scoring purposes. Cortright was chosen because she had experience conducting interviews. This decision was approved by a Human Resources manager and by the Director of Human Resources. Additionally, it asserts that upon interviewing all three candidates, the highest score went to the third ranked candidate on the eligible list. This candidate was head of Ancora's Leave Unit, the Workers' Compensation Unit and handled all promotional announcements for 1,400 staff. The second highest score went to the other first ranked candidate on the eligible list. This candidate was serving provisionally in the subject title. Further, the appointing authority asserts that the appellant scored last. It claims that her answers were not well thought out and did not expand on questions with knowledge like the other two candidates. It also asserts that the appellant failed to complete a self-assessment form in which computer-based skills information was sought.

In reply, the appellant again questions why staff outside of Ancora had to be brought in to help keep interviews fair when all prior interviews were conducted in-house. The appellant also asserts that she had filed a discrimination complaint in 2021 in which the Director of Human Services was named. She claims that the Director retaliated against her in 2021 by not promoting her. In this regard, she argues how would the Director have been able to fairly determine who should have been selected from the Central Office to conduct interviews. Further, the appellant maintains that she answered the interview questions to the best of her knowledge. She asserts that none of the questions were based on specific job duties. The appellants explains that she has many years of experience with leaves as she processed them for six years and supervised the process for an additional two years. She also has experience in non-nursing recruitment and preparing Notices of Vacancies. Finally, she asserts that the candidate ranked third did not meet the experience requirement for the subject position.

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, 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 the instant matter, the appellant has objected to being bypassed for appointment. The appointing authority asserts that it properly exercised its discretion under Rule of Three to appoint the candidates it deemed most qualified, and it provided arguments and evidence in support of its contentions. The appellant argues that the interview process for the subject title was different from prior interviews as a person from outside Ancora was brought in to be on the panel. In this regard, the Civil Service Commission (Commission) notes that it is within an appointing authority's discretion to choose its selection method. Appointing authorities are permitted to develop and utilize objective standards in order to determine how to use that discretion. The use of a panel of interviewers and the assignment of scores based on answers to questions related to the position is a permissible way for the appointing authority to make a hiring decision, so long as that hiring decision is in compliance with *N.J.A.C.* 4A:4-4.8(a)3. See *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). Therefore, the appointing authority's decision to utilize an individual outside of Ancora in an effort to keep the process fair, was well within its discretion in developing its selection method. Moreover, while the appellant questions how the Director could have remained impartial in determining the proper person to conduct fair interviews given that the appellant had previously filed a discrimination complaint against her, she provides no arguments or evidence that the person utilized, Cortright, was not competent to conduct interviews or that she exhibited any bias or prejudice toward the appellant during the interview and selection process.

The appellant has also questioned the experience of the third ranked candidate and her eligibility for the subject title. All three applicants for Personnel Assistant 1 (PS2577H) had their education and work experience evaluated by the Division of Agency Services and were found to have met the requirements posted on the examination announcement for the subject title. Thus, the candidate ranked third was properly admitted to the examination and properly on the resultant eligible list.

Further, 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.

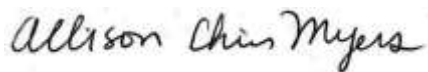
Moreover, the appointing authority presented legitimate reasons for the appellant's bypass that have not been persuasively refuted. Furthermore, the Commission notes that appellant does not possess a vested property interest in the position. The only interest that results from placement on an eligible 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). Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the Personnel Assistant 1 (PS2577H), Ancora Psychiatric Hospital 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 24TH DAY OF JULY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Jean DiGuglielmo
Nancy Bill
Division of Human Resource Information Services
Records Center