



STATE OF NEW JERSEY

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

In the Matter of Joshua Kamen, Fire
Fighter (M1892W), Hamilton
Township

Bypass Appeal

CSC Docket No. 2024-258

ISSUED: July 3, 2024 (EG)

Joshua Kamen, represented by Michael L. Prigoff, Esq., appeals the bypass of his name on the Fire Fighter (M1892W), Hamilton Township eligible list.

By way of background, the appellant appeared as a non-veteran eligible on the subject eligible list, which promulgated on March 29, 2019, with 107 eligibles and expired on March 28, 2023. A certification of 15 eligibles was issued on September 28, 2022 (OL221119) with the appellant listed in the seventh position. In disposing of the certification, the appointing authority bypassed the appellant and the eligible in the eighth position, removed the eligibles in the first, third, fifth, sixth, ninth, tenth and eleventh positions, and appointed eligibles in the second, fourth and twelfth positions.

On appeal to the Civil Service Commission (Commission), the appellant argues that after his interview with the appointing authority in early March 2023, he was informed that he would receive a conditional offer of employment. In early April 2023, the appellant passed the Physical Performance Test (PPT). The appellant asserts that he was subsequently informed that he was being bypassed for appointment and objects to that action.

In response, the appointing authority argues that it properly exercised its discretion under “Rule of Three” to appoint the candidate it deemed most qualified. Specifically, it stated that the appointed candidate in the 12TH position possessed over

20 different training certifications. Further, the Fire Chief indicated that the candidate in question was enthusiastic and knowledgeable about the Hamilton Fire Department indicating her desire to work her way onto one of the specialty companies. The Fire Chief added that this candidate's resume was an example of dedication to fire service as a volunteer and demonstrated the path similarly taken by their current fire fighters who aspire to bring the very best emergency services to their town. In support of its contentions, the appointing authority submitted copies of the appointed candidate's application, resume and numerous certifications and awards.

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).

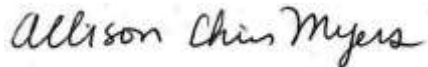
In the instant matter, the appellant has objected to being bypassed for appointment. However, he has not provided any evidence or arguments asserting that his bypass was improper in anyway. The appointing authority asserts that it properly exercised its discretion under "Rule of Three" to appoint the candidate it deemed most qualified and it provided arguments and evidence in support of its contentions. In this regard, the appellant has not rebutted the appointing authority's assertions. He has not presented any substantive evidence regarding his 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. 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 Fire Fighter (M1892W), Hamilton Township 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 3RD DAY OF JULY, 2024



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