



STATE OF NEW JERSEY

In the Matter of Kyle McParland,
Police Officer (M0132D), Rockaway

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

CSC Docket No. 2024-1517

List Bypass Appeal

ISSUED: July 3, 2024 (HS)

Kyle McParland, represented by Zinovia H. Stone, Esq., appeals the bypass of his name on the Police Officer (M0132D), Rockaway, eligible list.

The appellant appeared as the third ranked non-veteran eligible on the subject Police Officer (M0132D) eligible list, which promulgated on November 10, 2022 and expired on November 9, 2023. A certification, consisting of the names of 15 non-veteran eligibles, was issued on March 21, 2023 (OL230264) with the appellant listed in the first position. In disposing of the certification, the appointing authority bypassed the appellant and appointed, effective October 12, 2023, B.N., F.M., W.K., and B.M., respectively the fourth, fifth, ninth, and 10th listed eligibles. The certification disposition was recorded January 17, 2024.

In his appeal to the Civil Service Commission (Commission), postmarked January 23, 2024,¹ the appellant contends that his bypass is suspect. He states that Rockaway Township is predominantly Caucasian; that he is African American; and that none of the lower-ranked candidates hired are African American.

In response, the appointing authority, represented by Thomas N. Ryan, Esq., maintains that the appellant was legitimately bypassed based on its Nepotism Policy set forth within the Rockaway Township Policy and Procedure Manual, effective

¹ As the appeal was postmarked a mere six days after the certification disposition was recorded, the appeal is timely, contrary to any doubts the appellant may have on that issue. See *N.J.A.C.* 4A:2-1.1(b).

March 1, 2004 and most recently revised August 8, 2023. The Nepotism Policy provides:

A. No member of a family shall be in a position that provides direct supervision over another member of the same family. This precludes the acceptance of application for employment from relatives for positions in the same department where supervision conflicts exist, or through promotion potential, could exist.

B. When in the normal selection process, relatives of Township of Rockaway employees are considered for appointment or promotion, the selection will be deferred to the Office of the Business Administrator for final certification. Relatives for the purpose of this Policy, include all members of the immediate family, including husband, wife, parents, step-parents, brothers, sisters, direct-line aunts and uncles, children, grandparents, grandchildren and in-laws by reason of relation to any of the above. Aunts, uncles, nephews or nieces, by marriage, and cousins are not regarded as members of the immediate family for the purpose of this Policy.

C. This policy is not for the purpose of depriving any citizen of an equal chance for government employment but is solely to eliminate the potential for preferential treatment of the relatives of government personnel.

This Policy will not deprive any present employee of any promotional right in normal career development nor change the existing status of any employee. This policy does not supersede contractual agreements, NJDOP and/ or Civil Service regulations.

The appointing authority indicates that as John McParland, Police Sergeant, and Martin McParland, Police Chief, are respectively the appellant's father and direct-line uncle, the appellant is precluded from application for employment in the Police Department. It states that the Civil Service Act was established to remove improper considerations from employment decisions and maintains that the Nepotism Policy is a legitimate factor to ensure that the best qualified public servants are hired. The appointing authority insists that the favoritism of the Police Chief in the supervision of his nephew must be avoided in order to ensure that the public is best served. In support, the appointing authority submits the certified statement of Paula Cozzarelli, Business Administrator since September 11, 2023, and a copy of the aforementioned Rockaway Township Policy and Procedure Manual.

In reply, the appellant contends that there was "no chance" of there being nepotism in the hiring process as it was administered via this agency. Specifically,

he took the Civil Service examination and placed high on the ranked list of eligibles via his own efforts and abilities. Thus, in the appellant's view, the fact that he was the top candidate available for hire had nothing to do with nepotism.

The appellant further argues that the appointing authority's supposed anti-nepotism stance would be admirable if it were enforced, but it has not done so. Specifically, the appellant highlights examples where the Nepotism Policy was allegedly not observed. These examples include the following:

- B.N. is the cousin of K.B., who received a permanent appointment to the title of Police Officer, effective September 28, 2007.
- W.K. is the brother of R.K., who received a permanent appointment to the title of Police Officer, effective January 6, 2023.²

The appellant argues that the appointing authority's objection to his relationship to the current Police Chief and a current Police Sergeant on anti-nepotism grounds is certainly a pretext for reasons that are arbitrary, capricious, politically motivated, or discriminatory. In support, the appellant submits two exhibits: a table titled "Related Rockaway Township Police Department Employees," which lists the supervisory employee, the subordinate employee, and the relationship between the two, and a list of Police Department personnel with their dates of hire.

The appointing authority, despite being provided the opportunity, did not present any arguments in response for the Commission to review.

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 allow an appointing authority to select any of the top three interested eligibles on an open competitive list, provided that no veterans are on the list. 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 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

² It is noted that the appellant provided other examples where the Nepotism Policy was allegedly violated. However, because the issue in this appeal is whether the appointing authority validly bypassed the appellant *on the March 21, 2023 (OL230264) certification in favor of B.N., F.M., W.K., and B.M.* and the appellant does not allege that the appointments of F.M. and B.M. violated the Nepotism Policy, the only possibly relevant examples are those of B.N. and W.K. Other examples are not relevant and need not be addressed.

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 appoint, the employer would then have the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.

Since only non-veterans were listed on the certification, it was within the appointing authority's discretion to select any of the top three interested eligibles on the certification for each appointment made. The appointing authority indicates that it bypassed the appellant pursuant to its anti-nepotism policy. It notes that John McParland, Police Sergeant, and Martin McParland, Police Chief, are respectively the appellant's father and direct-line uncle and maintains that the favoritism of the Police Chief in the supervision of his nephew must be avoided in order to ensure that the public is best served. There is no basis to second guess these legitimate concerns. *See In the Matter of James R. Sweitzer* (MSB, decided June 6, 2007) (anti-nepotism policy did not conflict with any tenet of Civil Service law or rules).

Neither has the appellant shown that the appointing authority's proffered reason was pretextual. In this regard, the appellant contends that there was "no chance" of there being nepotism in the hiring process as it was administered via this agency, specifically pointing to his own efforts and abilities in taking the Civil Service examination and ranking high on the eligible list. The Commission disagrees. Although administering examinations and establishing eligible lists undoubtedly are core functions of this agency, the appellant's argument overlooks that it is the *appointing authority* that ultimately had the discretion to select any of the top three interested eligibles on the certification for each appointment made *from* the established eligible list. Therefore, the Commission cannot accept the contention that there was "no chance" of there being nepotism in the hiring process.

Further, the appellant contends that the appointments of B.N. and W.K. demonstrate the appointing authority's inconsistency in applying its anti-nepotism policy. Specifically, the appellant claims that B.N. is the cousin of previously appointed Police Officer K.B. However, the appellant provides no substantive evidence of this familial relationship. Even if he had, it would not demonstrate inconsistency in applying the policy because cousins are outside the policy's scope by its terms. The appellant also claims that W.K. is the brother of previously appointed

Police Officer R.K. However, the appellant again provides no substantive evidence of this familial relationship. He merely asserts the existence of the relationship and does not explain the basis for his knowledge.

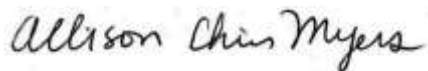
Additionally, even assuming, *arguendo*, that the appellant is more qualified for the position at issue, the appointing authority still has selection discretion under the “Rule of Three” to appoint a lower-ranked eligible absent any unlawful motive. See *N.J.A.C. 4A:4-4.8(a)3*; *In the Matter of Nicholas R. Foglio, Fire Fighter (M2246D), Ocean City*, 207 N.J. 38, 49 (2011). Compare, *In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984) (Hearing granted for individual who alleged that bypass was due to antiunion 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). Moreover, the appellant does not possess a vested property interest in the position. In this regard, 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 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 a legitimate reason for the appellant’s bypass that has not been persuasively refuted. Accordingly, a review of the record indicates that the appointing authority’s bypass of the appellant’s name was proper, and the appellant has not met 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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