



STATE OF NEW JERSEY

In the Matter of Lee Langelli, Quality
Assurance Coordinator (PS9694K),
Division of Aging Services,
Department of Human Services

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

CSC Docket No. 2024-2134

Bypass Appeal

ISSUED: September 25, 2024 (HS)

Lee Langelli appeals the bypass of her name on the Quality Assurance Coordinator (PS9694K), Division of Aging Services, Department of Human Services, eligible list.

The appellant appeared as the first ranked non-veteran eligible on the subject eligible list, which promulgated on January 18, 2024 and expires on January 17, 2027. A certification, consisting of the names of five non-veteran eligibles, was issued on January 18, 2024 (PS240131) with the appellant listed in the first position. In disposing of the certification, the appointing authority, in pertinent part, bypassed the appellant and appointed, effective March 9, 2024, V.H., T.B., and S.R., respectively the second through fourth listed eligibles.

On appeal to the Civil Service Commission (Commission), the appellant takes issue with the appointments of V.H. and T.B. because their appointments were converted from provisional to permanent without interviews being held for those positions.

In response, the appointing authority indicates that interviews were not conducted at the time of certification for the positions filled permanently by V.H. and T.B. because they were reachable; they had been interviewed and selected from a vacancy posting prior to their provisional appointments; and they had been successfully performing the job functions as provisional employees. The appellant had also applied to, and was interviewed from, that same vacancy posting and was

not selected for either provisional appointment as the hiring manager noted that V.H. and T.B. were the best candidates based on their experience.

In reply, the appellant insists that the appointing authority erred by not holding interviews for the positions in question at the time of certification.

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, it is noted that the appellant has the burden of proof in this matter. *See N.J.A.C.* 4A:2-1.4(c).

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 vacancy filled. The appellant complains that V.H. and T.B. had their provisional appointments converted to permanent appointments without interviews being held for those positions at the time of certification. While appointing authorities are permitted to interview candidates and base their hiring decisions on the interview, interviews are not required. *See In the Matter of Nicholas R. Foglio* (CSC, decided February 22, 2012). It is within the appointing authority's discretion to choose its selection method, *i.e.*, whether or not to interview candidates. *See, e.g., In the Matter of Angel Jimenez* (CSC, decided April 29, 2009); *In the Matter of Abbas J. Bashiti* (CSC, decided September 24, 2008); *In the Matter of Paul H. Conover* (MSB, decided February 25, 2004); *In the Matter of Janet Potocki* (MSB, decided January 28, 2004). Moreover, the former Merit System Board has found that provisional experience of lower-ranked eligibles is valuable and should not be overlooked in the selection process. *See In the Matter of Mahasen Adra-Halwani* (MSB, decided October 5, 2005). Thus, it is reasonable that if they were reachable under the "Rule of Three," the appointing authority would want to permanently appoint its provisional appointees. *See In the Matter of Terrence Crowder* (CSC, decided April 15, 2009).

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 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). 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 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. 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 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 25TH DAY OF SEPTEMBER, 2024



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