



**STATE OF NEW JERSEY**

In the Matter of S.J., Fire Captain  
(PM5034D), Pleasantville

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2025-618

Bypass Appeal  
Hearing Granted

**ISSUED: February 26, 2025 (HS)**

S.J. appeals the bypass of his name on the Fire Captain (PM5034D), Pleasantville, eligible list.

As background, the appellant appeared as the second ranked non-veteran eligible on the subject eligible list, which promulgated on September 28, 2023 and expires on September 27, 2026. A certification, consisting of the names of four non-veteran eligibles, was issued on April 18, 2024 (PL240664) with the appellant listed in the second position. In disposing of the certification, Pleasantville, in pertinent part, bypassed the appellant and appointed, effective July 15, 2024, A.B., the third listed eligible.

On appeal to the Civil Service Commission (Commission), the appellant states that beginning with the promotional eligible list for Fire Captain (PM0137A), which issued on June 17, 2020, Pleasantville decided to conduct an interview process, and any promotional or interdepartmental advancement within the Fire Department has been subject to an interview process. He asserts, however, that A.B. was appointed without any interview process being conducted. The appellant claims to have had a meeting with the current acting Fire Chief as to why the interview process was not conducted for the current promotion. According to the appellant, the acting Fire Chief stated that he requested that Pleasantville continue the interview process to give all candidates a fair chance but was informed that the former Fire Chief had recommended A.B. The appellant further asserts that after A.B.'s promotion, the interview procedure will be reinstated for future promotions within the Fire

Department. The appellant contends that the established procedure was not adhered to because he was going through worker's compensation and whistleblower litigation pertaining to the conditions at the fire station. Further, he recounts that on August 13, 2024 at approximately noon, he met with the Mayor to discuss this matter. The appellant claims that during that discussion, the Mayor mentioned that he was bypassed partly because of his prior diagnosis for posttraumatic stress disorder (PTSD). The appellant insists that in his 24-year career as a Pleasantville Fire Fighter, he has no disciplinary record and has been a model employee.

In response, the Mayor maintains that she did not say the appellant was probably denied a promotion due to PTSD. The Mayor states that the appellant did tell her of an experience he had, but that was some time ago. The Mayor insists that she is in no position to diagnose anyone's medical conditions.

In further response, Pleasantville, now represented by Steven S. Glickman, Esq., proffers that there is no one better to assess the merit and fitness of a Fire Fighter for promotion to Fire Captain than the Fire Chief. In this case, prior to selecting the candidate for promotion to Fire Captain, the former Business Administrator contacted the former Fire Chief for his recommendation. On April 25, 2025, the former Fire Chief corresponded with the former Business Administrator with his recommendations for promotion, including promotion to Fire Captain. His recommendation was to promote a Fire Fighter other than the appellant. For this reason, Pleasantville promoted the other candidate and not the appellant.

In reply, the appellant argues that Pleasantville is bound to provide a statement of the reason the appointee was selected instead of the higher ranked eligible, and it has violated the statutory concept of merit and fitness. *See N.J.S.A. 11A:1-2a.*

In reply, Pleasantville denies that it has violated any statute. It indicates that it takes no position with respect to the appellant's assessment that he is fit and qualified for the promotion. However, not all qualified candidates can be promoted if there are insufficient vacancies to promote all eligible candidates, and that was the case in this instance.

## 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).*

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*, 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.

In this matter, the appellant appeared as the second listed eligible on the certification. A.B. was listed third. The appellant argues that even though he was well-qualified for the position, Pleasantville deviated from an established interview process and bypassed him in favor of A.B. for discriminatory and retaliatory reasons. Pleasantville maintains that there is no one better than the Fire Chief to assess the merit and fitness of a Fire Fighter for promotion to Fire Captain, and the Fire Chief recommended A.B.'s promotion in this case.

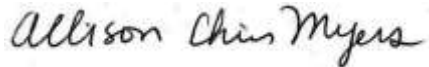
The appellant disagrees and insists that Pleasantville did not provide a statement of reason for his bypass consistent with merit and fitness principles. Upon review, the Commission notes that beyond Pleasantville's general statements as to why it selected A.B., there is a dearth of information in the record as to his qualifications. See *In the Matter of Nicholas R. Foglio, Fire Fighter (M2246D)*, *Ocean City*, 207 N.J. 38, 48-49 (2011) (Commission must have certainty that appointment process was not exercised arbitrarily, and appointing authority explanation must provide "real enlightenment").

Based on the foregoing, a material dispute of fact exists in this matter regarding the reason for the appellant's bypass on the certification. Accordingly, under these circumstances, where it is not possible to determine on the written record whether the reason for this action was proper, this matter should be referred to the Office of Administrative Law for a hearing.

**ORDER**

Therefore, it is ordered that this matter be referred to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 26<sup>TH</sup> DAY OF FEBRUARY, 2025



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