

B-24



STATE OF NEW JERSEY

In the Matter of Arnaldo Mendoza,
Human Services Specialist 3,
Bilingual in Spanish and English
(PC0078S), Salem County Board of
Social Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-794

Bypass Appeal

ISSUED: NOV 20 2015

Arnaldo Mendoza appeals the bypass of his name on the Human Services Specialist 3, Bilingual in Spanish and English (PC0078S), Salem County Board of Social Services eligible list.

The appellant, a non-veteran, took the subject promotional examination, achieved a passing score, and was ranked on the resultant eligible list. The appellant's name was certified to the appointing authority on May 19, 2015. In disposing of the certification, the appointing authority bypassed the appellant, who was the number one ranked eligible on the PL150576 certification, and appointed the second ranked eligible, Nereida Gonzales, effective July 1, 2015.

On appeal, the appellant states that he was the 1st ranked eligible on the subject list and that he has held a bilingual certification for five years. Additionally, the appellant states that he possesses a Bachelor's degree while the lower ranked eligible who was appointed only possesses an Associate's degree. Moreover, the appellant asserts that his bypass was well known, even before he took the examination, because the appointing authority had stated that the position was for Gonzales, which is not equal opportunity. He also maintains that he has been discriminated against for a workplace injury he suffered in April 2015 which resulted in his filing a Worker's Compensation claim. The appellant states that he had a meeting with the appointing authority on August 5, 2015 regarding his bypass and asserts that he was advised that he was not selected because his productivity was low. The appellant states that he cannot work as fast as he used

to and contends that the appointing authority bypassed him because of his workplace injury. The appellant contends that the appointing authority retaliated against him for allegedly being late by five minutes or less during July and August 2015. He states that these incidents occurred after he had the meeting with the appointing authority regarding his bypass. Additionally, the appellant claims that he told the Board of Social Services about the asserted misuse of funds and the Director of the Board admitted to him that she used the fact that he was a whistleblower in order to bypass him.

In supplemental submissions, the appellant questions how a candidate for the promotional examination for Human Services Specialist 4, Bilingual in Spanish and English (PC1362S), Salem County Board of Social Services can be appointed via a waiver. The appellant asserts that the individual appointed as a result of this announcement is "under qualified" in terms of education and that he has not successfully passed all Civil Service examinations that he has taken, including the bilingual portion of the PC1362S examination. As such, the appellant requests that the individual appointed to the title be compelled to present his high school diploma or equivalent to the Commission to demonstrate that he possesses the required education for the title. In this regard, the appellant maintains that this individual will be unable to produce this evidence and any notion that his educational records may have been lost is not accurate. Therefore, the appellant requests that the Commission scrutinize this individual's file as he does not meet the qualifications for the position. Conversely, the appellant notes that he has passed the bilingual test and is certified bilingual in Spanish and English. The appellant also claims that the PC1362S announcement displays explicit examples of coercion, since the three prior promotional announcement for Human Services Specialist 4, Bilingual in Spanish and English were open to the next two lower-in series titles, but this examination was only open to the next lower in-series title. Therefore, the appellant argues that the appointing authority has chosen to diminish a competitive examination situation by limiting the potential pool of candidates who could file for the test.

In response, the appointing authority states that there were two eligibles on the Human Services Specialist 3, Bilingual in Spanish and English (PC0078S) list, the appellant and Nereida Gonzales. With the input from two administrators, the appointing authority states that it considered a number of factors in its selection process, such as knowledge of the program, volume and quality of work, the ability to communicate well, organizational skills, leadership qualities, decision making skills, demonstrated ability to work independently, demonstrated ability to follow agency policies and carry out directives in a timely manner, and efficiently work without constant oversight or reminders. Based on these criteria, the appointing authority states that it selected Gonzales, an employee with almost 25 years of experience, as she has demonstrated the ability to work independently with little or no supervision. Additionally, it notes that Gonzales completed the most cases in the

intake unit in 2014 and her thorough knowledge of the rules and regulations of the various programs is demonstrated through the quality of her work. Given her leadership qualities, as demonstrated by her willingness to go above and beyond to take on more work, help others, train staff, and outstanding management skills, the appointing authority states that Gonzalez was the best candidate for this 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. *N.J.A.C.* 4A:2-1.4(c), in conjunction with *N.J.A.C.* 4A:4-4.8(b)4, provides that the appellant has the burden of proof to show by a preponderance of evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper. As long as that discretion is properly utilized, an appointing authority's decision will not be overturned.

Initially, since the appellant, a non-veteran, headed the certification, it was within the appointing authority's discretion to select either of the two eligibles on the certification. The appellant, the first-ranked eligible, was bypassed in favor of the eligible ranked in the 2nd position. The appointing authority indicated that it selected the lower-ranked eligible because she has worked for the agency since 1990, approximately 25 years, and that her case production far exceeds the standards set for employees each month. In this regard, it noted that in 2014, Gonzalez completed 1.5 times the number of cases as the next highest producing employee in her unit. Further, the appointing authority emphasized that Gonzales demonstrated her thorough knowledge of the rules and regulations governing the various programs and shares this knowledge with her co-workers. Thus, Gonzales' ability to complete the work accurately and timely, and her decision making skills earned her the privilege to authorize the release of her own cases without supervisory review, which is consistent with the traits needed for Human Services Specialist 3, Bilingual in Spanish title – a position the appointing authority utilizes in an assistant supervisory capacity. Additionally, the appellant has been employed by the appointing authority since 2009. Therefore, the appointing authority's selection of a lower ranked eligible for the reasons it stated, who has many more years of experience with the agency than the appellant, cannot be considered improper.

Regardless, absent any unlawful motive, the 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). Other than his mere allegations, that the appointing authority is retaliating against him for filing a

Workers' Compensation claim and for his reporting of purported misuse of funds, 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 legitimate reasons for appointing Gonzales which have not been persuasively refuted.

With respect to his allegations regarding the promotional examination announcement for Human Services Specialist 4, Bilingual in Spanish and English (PC1362S), *N.J.A.C.* 4A:4-2.4(a) states that if a title that is the subject of a promotional examination is part of a title series, the examination, with or without all or part of the open complete requirements, as appropriate, shall be open to one of the following:

1. The next lower in-series title used in the local jurisdiction;
2. The next two lower in series titles used in the local jurisdiction; or
3. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles used in the local jurisdiction.

The promotional examination for PC1362S was only open to incumbents in the Human Services Specialist 3 and Human Services Specialist 3, Bilingual in Spanish and English titles. While the appellant claims that the appointing authority invidiously limited the pool of potential eligibles since prior announcements for the subject title were opened to a broader title scope, this examination was properly announced in accordance with *N.J.A.C.* 4A:4-2.4(a)1, which permits an examination to be announced only to the next lower in-series title used in the local jurisdiction. This agency's rules set forth that *all* requirements for a promotional examination must be satisfied by the examination closing date. *See N.J.A.C.* 4A:4-2.6. *See also In the Matter of Robert Gaffin and Ronald A. Maruca, Supervising Engineer, Construction (PS3342T)*, Docket No. A-4827-87T1 (App. Div. June 5, 1989). As such, a candidate's education, experience, or performance rating are irrelevant if he or she does not have permanent service in any title listed on the promotional announcement in the promotional unit.

With respect to his challenge regarding the credentials of the candidate appointed from the PC1362S list, the appellant's bare allegations regarding another candidate's credentials, without more, do not demonstrate that an error was made in the screening of eligibles for this, or any other examination. Given that the appellant has not provided specific challenges to the eligibles' credentials, he has not demonstrated that the individual was inappropriately admitted to the examination. Nevertheless, all applications are screened by the Division of Agency

Services prior to any examination to ensure that all candidates possess the minimum requirements to establish eligibility. *See In the Matter of Damon Wiencke* (MSB, decided April 9, 2008). Finally, a promotion upon waiver of competitive examination was authorized in accordance with *N.J.A.C. 4A:4-2.7* for the PC1362S since the record established that the number of interested eligibles for promotion did not exceed the number of promotional appointments by more than two, veterans preference rights were not a factor, the employee had not failed, within one year prior to the closing date, a promotional examination for the same title, and the employee had been successfully tested in the basic skills required for the promotional title.

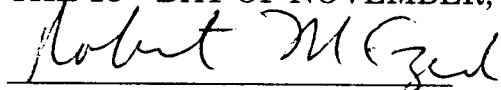
Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name was proper and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that the 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 18TH DAY OF NOVEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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