



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jerald Hubbs,
Battalion Fire Chief (PM0140P),
Gloucester City

CSC Docket No. 2016-1569

List Bypass Appeal

ISSUED: **NOV 23 2016** (WR)

Jerald Hubbs appeals the bypass of his name on the Battalion Fire Chief (PM0140P), Gloucester City, eligible list.

The appellant, a nonveteran, appeared on the subject eligible list, which promulgated on September 12, 2013 and expires on September 11, 2016. A certification containing two names was issued to the appointing authority on July 29, 2015. The appellant appeared as the first-ranked eligible on the certification. In disposing of the certification, the appointing authority appointed Joseph Schili, the second-ranked eligible, effective September 25, 2015.

On appeal to the Civil Service Commission (Commission), the appellant posits that his bypass from the subject eligible list may have been due to nepotism. He claims that Brian Hagan, the Department Chief "has a relative by marriage that sits on the fire committee and was directly involved in the interview process for promotions." In this regard, the appellant claims that Hagan favors his "blood relatives," particularly Schili. For example, the appellant asserts that Hagan has allowed "Schili to take off vacation with little or no notice" and has "removed disciplinary documents that were filed against" Schili.

The appellant further alleges that Hagan harasses him and notes that he has filed a Conscientious Employee Protection Act (CEPA) case. Specifically, he contends that, as a result of his request to repair the men's locker room shower, Hagan threatened to change his shift to group 4, which he claims is known as the "lazy" group.

The appellant also complains that before Schili's appointment, the practice was to appoint the first ranked eligible to the subject position in an acting capacity. He contends that the previous time a Battalion Chief was appointed, the appointing authority selected the first-ranked eligible, despite the appellant's superior qualifications. The appellant also alleges that Hagan further broke from past practice by providing Schili more time as the acting Battalion Chief and not providing a "department evaluator" to the Mayor and fire committee. The appellant also claims that Hagan intentionally withheld information from the aforementioned parties that would have "diminished Schili's interview and evaluation scores."

In response, the appointing authority, represented by Leonard J. Wood, Esq., maintains that Mr. Schili was determined to be the best suited for the subject position because he "performed significantly better during the interview process." Responding to the appellant's allegation of nepotism, the appointing authority observes that the appellant is married to the "Chiefs" first cousin and that the "Chief" does not "play favorites with family members." While it concedes that vacations have been authorized without advance notice, it states that this happened on a number of occasions and that Schili was certainly not alone in having an exception made. The appointing authority denies that Hagan harassed the appellant and contends that the matter involving the appellant's CEPA complaint has been resolved and is unrelated to this matter.

The appointing authority asserts that Fire Fighters are moved to different groups based on its operational needs, and one group is not better than any other. It denies the appellant's claim that group 4 is known as an undesirable group. The appointing authority contends that both candidates "got time in the acting capacity" and neither candidate received preferential or extra time in that capacity. It also states that the decision to appoint Mr. Schili "was unanimous at both the committee and council level." In this regard, the appointing authority claims that the "evaluation process is conducted solely and exclusively by the fire committee," which is comprised of the Mayor and two elected council members. It states that the fire committee requested that Hagan have no part in the evaluation process, as it was aware of the "familial" connection and did not want there to be any problems. The appointing authority asserts that the process and review of any documents or files are within the purview of the fire committee and denies the allegation that Hagan suppressed information. Finally, it states that the decision to appoint Schili was unanimous. Accordingly, the appointing authority contends that the appellant's appeal should be denied.

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 the evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper.

Initially, it is noted that an appointing authority is not obligated to provide a candidate with the reasons why a lower ranked candidate was appointed. See *Local 518, New Jersey State Motor Vehicle Employee Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 *N.J. Super.* 598 (App. Div. 1993). However, upon his appeal, the appellant was provided with the reasons for his bypass and was provided an opportunity to respond to these reasons.

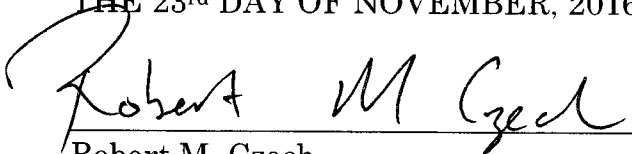
A review of the record indicates that the appellant has not shown by a preponderance of the evidence that the decision to bypass his name for appointment was improper. On appeal, the appellant offers no evidence, *e.g.*, documents or sworn statements to support his allegations. Moreover, the appellant has not disputed the appointing authority's reasons for bypassing him. 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. Moreover, there is nothing in the record to indicate that the appellant's non-selection was based on an unlawful motive. 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). Apart from his assertions, the appellant has not submitted any evidence whatsoever to support his claim of nepotism or favoritism. On the contrary, the appointing authority states that Hagan was not involved in the selection process and the decision to appoint Schili was unanimous. Also, the appointing authority notes that both candidates are related to higher ranking members of the Fire Department. Further, it is noted that 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). Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the Battalion Fire Chief (PM0140P), Gloucester City, 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 23rd DAY OF NOVEMBER, 2016



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