



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christopher Oliver,
Fire Lieutenant (PM5179N),
Gloucester City

CSC Docket No. 2016-1488

List Bypass Appeal

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

Christopher Oliver, represented by Matthew Dempsky, Esq., appeals the bypass of his name on the Fire Lieutenant (PM5179N), Gloucester City, eligible list.

The appellant, a nonveteran, appeared on the subject eligible list, which promulgated on December 20, 2012 and expired on January 6, 2016.¹ A certification containing four 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 Patrick Hagan, the second-ranked eligible, effective September 25, 2015. It also requested the removal of the third and fourth ranked eligibles due to their failure to respond to the certification, and their names were removed from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant believes that there is no legitimate reason for bypassing him and suggests that nepotism or some other dubious reason may have caused his bypass, as Mr. Hagan “has two biological relatives who both hold the position of Department Chief and Battalion Chief respectively.” He further claims that the Department Chief “has a relative by marriage that sits on the fire committee and was directly involved in the interview process for promotions.” The appellant also complains that the appointing authority does not use “promotional procedures or criteria” when making promotional appointments. Finally, the appellant argues that he was the most

¹ The eligible list was originally due to expire on December 19, 2015, but was extended until a new list became available.

qualified candidate and submits his resume, which lists numerous certifications that he has attained.

In response, the appointing authority, represented by Leonard Wood, Esq., maintains that Mr. Hagan was determined to be the best suited for the subject position because he "was a better fit within the department, was certainly more knowledgeable about fire department issues and personnel issues" and because "Mr. Oliver had significantly less education" than Mr. Hagan. Therefore, it contends that the appellant's appeal should be denied.

The appellant responds that his education is not much different than Mr. Hagan's. In this regard, he states that neither of them has more than a high school degree. However, he states that he "has 36 community college credits relevant to his position as a Fire Lieutenant." Thus, the appellant argues that Mr. Hagan does not have "significantly more education" than he does and reiterates his qualifications and the certifications he has attained.

In response, the appointing authority states that the appellant has 20 college credits whereas Mr. Hagan has 72 college credits.² It also states that Mr. Hagan was accepted to the Rutgers University and New Jersey Civil Service Commission's Certified Public Management Program in early September 2015. Therefore, the appointing authority maintains that Mr. Hagan had a "more advanced educational background at the collegiate level and continues to strive to obtain a more advanced education in public service at the collegiate level" than the appellant. The appointing authority further claims that Mr. Hagan's employment references and letters of recommendation "far outweighed" those of the appellant. In this regard, it asserts that the appellant had no references or letters of recommendation from any supervisors or peers from the Gloucester City Fire Department or other fire departments. By contrast, it states that Mr. Hagan had references and letters of recommendation from three Gloucester Fire Department supervisors, two letters from the Department's volunteer Battalion Chiefs and three letters of recommendation from "Mutual Aid town's Fire Chiefs."

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. At the time of disposition of the certification, *N.J.A.C.* 4A:4-4.8 no longer required that an appointing

² The appellant subsequently responded to correct the appointing authority, observing he has 36 college credits. He also argued that the appointing authority's failure to correctly account for his college credits causes him to doubt the number of Hagan's college credits. In reply, the appointing authority maintained that because Hagan had "significantly more credits," it wished to stand by its previous position.

authority must, when bypassing a higher ranked eligible, give a statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tie score.³ *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, with regard to the appellant's assertion that he was not provided a legitimate reason for his bypass, 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 regarding the July 29, 2015 certification indicates that the appellant has failed to meet his burden of proof. The appellant has not shown by a preponderance of the evidence that the decision to bypass his name or not appoint him to the position was improper. The appointing authority, in response to the appellant's appeal, has provided specific reasons for bypassing his name for appointment, namely, that Mr. Hagan was best suited for the position due to his education, knowledge of fire department issues and personnel issues, and his references and letters of recommendation. The appellant has not disputed the appointing authority's reasons, other than to argue that they have at least the same level of education. 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. 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 Fire Lieutenant (PM5179N),

³ The rule amendment became effective on May 7, 2012, upon publication in the *New Jersey Register*.

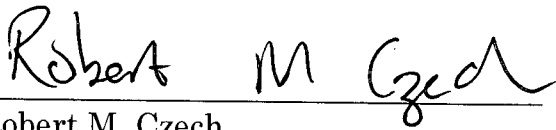
Gloucester City, eligible list, was proper and the appellant has failed to meet his burden of proof in this matter.

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



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Christopher Oliver
Matthew Dempsy, Esq.
Leonard Wood, Esq.
Kathleen Jentsch
Kelly Glenn
Records Center