



**STATE OF NEW JERSEY**

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

In the Matter of Dwayne Breeden,  
Fire Investigator (S0146T),  
Department of Community Affairs

CSC Docket No. 2017-3954

Bypass Appeal

**ISSUED: April 9, 2018 (SLD)**

Dwayne Breeden, appeals the bypass of his name on the eligible list for Fire Investigator (S0146T), Department of Community Affairs.

By way of background, the open-competitive examination for Fire Investigator (S0146T) was announced with a closing date of February 27, 2015. The resultant eligible list of 26 names, including the appellant, a non-veteran tied as the third ranked eligible, promulgated on April 23, 2015 and expires on April 22, 2018.<sup>1</sup> On April 23, 2015, a certification containing 16 names was issued to the appointing authority. In disposing of this certification, the appointing authority indicated in relevant part, that it appointed W.Z., one of the third ranked eligibles.<sup>2</sup> It is noted that the appellant did not appeal his bypass from that certification. On March 23, 2017 a certification containing 23 names was issued to the appointing authority. In disposing of this certification, the appointing authority indicated in relevant part, that both of the first ranked eligible veterans were interested in future certifications only, and it appointed J.J., one of the third ranked eligibles.<sup>3</sup>

<sup>1</sup> It is noted that this announcement was processed as a qualifying examination, *i.e.*, all applicants received the same score with veterans being listed first then non-veterans. As a result, the two eligible veterans were tied at rank one and the remaining non-veteran eligibles, including the appellant were tied at rank three. *See N.J.A.C. 4A:4-2.15(j)* (tied scores shall not be broken).

<sup>2</sup> This agency lists tied eligibles on an open-competitive eligible list, within a given rank in alphabetical order. Thus, on the April 23, 2015 certification the appellant, was listed in the second position, and W.Z., who was also tied as a third ranked eligible was listed in the 16<sup>th</sup> position. It is noted that the names of the two veterans did not appear on this certification.

<sup>3</sup> On the March 23, 2017 certification the appellant was listed in the fourth position and J.J., who was also tied as a third ranked eligible, was listed in the eighth position.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he was bypassed on two separate occasions and he questions whether his bypasses were for legitimate reasons. In this regard, the appellant notes that the individual who was appointed instead of him required training, and he believes that the appointment was “predetermined.” Additionally, the appellant questions the scoring of the candidates as the scores do not reflect the level of training an individual possessed or his or her level of education. Moreover, the appellant questions his changing “rank” on the notices he received. In this regard, he notes that on three different notices he was “ranked” second, third and fourth. Finally, the appellant argues that the position was “viewed” as a promotional opportunity and thus it had been “explained” that a current employee would rank higher after any veteran eligible.

In response, the appointing authority notes that although the appellant indicated he was bypassed twice, he only provided information concerning the most recent certification. Nevertheless, it maintains that for both certifications, it selected one of the eligibles who was tied at rank three pursuant to *N.J.A.C.* 4A:4-4.8(a)3. Specifically, it asserts that it selected the most suitable candidate on the basis of a review of the eligibles’ resumes and/or interviews. Additionally, the appointing authority asserts that all of the candidates on the subject eligible list were deemed to have met the minimum requirements for the position. However, it is the prerogative of an appointing authority to require additional job-specific training for new hires if deems appropriate. Finally, with regard to the remainder of the appellant’s questions, it notes that those items are the specific to Civil Service processes and thus it defers to the Commission on those matters.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(b) provides that an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. Although the appellant presents a substantive challenge regarding his bypass that took place in 2015, the controlling issue in this matter is whether the appellant’s appeal of his bypass on the April 23, 2015 certification was timely filed. The appellant’s appeal is dated June 15, 2017, but the certification he challenges was recorded as disposed on August 21, 2015. However, the appellant provides no reason why he did not file an appeal challenging that bypass, nor does he, in this matter, provide any specific information as to why that bypass was inappropriate. The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the appeals unreasonably exceeds that threshold of finality. Thus, it is clear that the appellant’s appeal of his bypass on the April 23, 2015 certification is untimely.

However, the Commission will address the appellant's arguments with regard to the timely challenge of his bypass on the March 23, 2017 certification. *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3 allow an appointing authority to select any of the top three interested eligibles on an open-competitive list, provided that no interested disabled veteran or veteran heads the list. *N.J.A.C.* 4A:2-1.4(c), 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.

A review of the record 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 on the March 23, 2017 certification was improper. In this regard, the appellant was tied with J.J. and several others, and after a review of their resumes and interviews, the appointing authority selected J.J. Although the appellant questions the fact that J.J. was sent for training after his appointment, he does not dispute the appointing authority's assertion that it has the ability to provide job-specific training for any new hire. Even assuming, *arguendo*, that the appellant was more job-prepared for the position at issue, the appointing authority still has selection discretion under the Rule of Three to appoint any of the top three interested eligible absent any unlawful motive. See *N.J.A.C.* 4A:4-4.8(a)3. In the instant matter, the appellant does not argue that his 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). With regard to the remainder of the appellant's allegations, as previously noted pursuant to *N.J.A.C.* 4A:4-2.15(j), tied scores shall not be broken. However, since tied scores are not broken, eligibles are simply listed in alphabetical order, assuming veteran's preference is not an issue. Since eligibles whose score are tied are listed in alphabetical order, the appellant's position on a particular certification, could change based on which eligibles' names were certified. With regard to the appellant's claim that individuals should have been given credited for specific experience and/or education, it must be noted that those claims are also untimely. In this regard, any challenges to the exam methodology or scoring needed to be filed when the list promulgated in April 2015. Further, 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 Investigator (S0146T), Department of Community Affairs 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 DAY OF , 2018



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