



**STATE OF NEW JERSEY**

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

In the Matters of Saurin Shah,  
Auditor 3 (PS3316N), Department of  
Labor

CSC Docket Nos. 2018-183 and  
2018-1191

Bypass Appeals

**ISSUED: APRIL 6, 2018** (HS)

Saurin Shah appeals the bypass of his name on the Auditor 3 (PS3316N), Department of Labor eligible list. These appeals have been consolidated due to common issues presented.

The appellant appeared as the third ranked non-veteran eligible on the subject eligible list, which promulgated on March 30, 2017 and expires on March 29, 2020. A certification was issued on April 7, 2017 (PS170567) with the appellant listed in the third position. In disposing of certification PS170567, the appointing authority bypassed the first listed non-veteran eligible and the appellant and appointed the second and fourth listed non-veteran eligible effective June 24, 2017. A second certification was issued on July 21, 2017 with the appellant listed in the second position. In disposing of certification PS171244, the appointing authority bypassed the appellant and appointed the first, third and fourth listed non-veteran eligible effective September 30, 2017.

On appeal to the Civil Service Commission (Commission), the appellant argues that he was the best candidate because he performs all the complex assignments that individuals serving in the title of Auditor 3 perform with very few to no overdue assignments and he achieved a high ranking on the eligible list.

In response, the appointing authority maintains that the appellant's work performance as an Auditor 2 is not acceptable. Specifically, it notes that the appellant's supervisor commented in the Performance Assessment Review (PAR) for the October 1, 2014 to September 30, 2015 rating period that the appellant's work

was error-filled. The appointing authority states that the appellant's PAR for the October 1, 2015 to September 30, 2016 rating period showed no improvement and maintains that the manner in which the appellant writes up his audits needs attention. It also states that the appellant did not reach an acceptable audit attainment level during the rating period ending September 30, 2016. In order to reach such level, the appellant had to have submitted a minimum of 0.50 assignment for each production day. Production days are determined by deducting holidays, vacation, sick days, meeting days and off production days from the total possible work days. For the rating period ending September 30, 2016, the appellant had 192.50 production days; thus, the required total for a satisfactory rating was 96.26. However, the appellant submitted 58 assignments. In support, the appointing authority submits, among other documents, the appellant's PAR for the rating period ending September 30, 2015, for which the appellant received an overall final rating of "Successful," and his PAR for the rating period ending September 30, 2016, for which the appellant received an overall final rating of "Unsatisfactory."

As to the appellant's statement regarding the complexity of his assignments, the appointing authority states that the appellant is required to conduct audits of varying size and complexity, as are all other Auditors. Each Auditor is assigned an inventory of assignments to be conducted. The assignments are not "graded" on complexity and are randomly assigned. The appointing authority also states that the difference between the Auditor 2 and Auditor 3 titles concerns the supervisory and review aspects of the Auditor 3 title. In this regard, an Auditor 3 is required to review the work of and train individuals serving in the titles of Auditor 1 and Auditor 2 whereas an Auditor 2 may assist in the training of new Auditors when needed.

In reply, the appellant argues that the quality of his work during the rating period ending September 30, 2015 was not compromised given the overall "Successful" rating he received for that period. He argues that the appointing authority's indication that his PAR for the rating period ending September 30, 2016 showed no improvement is unsubstantiated in light of his claim that the most complex assignments were never reviewed by his superiors. The appellant also states that he was reassigned to a position held by a now-retired Auditor 3 during the rating period ending September 30, 2016, assigned 100 complex audits, and asked to take on those assignments without formal training or "proper transitioning," while the former Auditor 3 was only held to a 90-audit count. He states that he grieved the issue, but the grievance went unanswered. He also claims that the second and fourth ranked eligibles were allowed to meet a lower audit count than he was.<sup>1</sup> The appellant further states that management did not

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<sup>1</sup> Agency records indicate that the second and fourth ranked eligibles received provisional appointments to the title of Auditor 3 effective June 13, 2015 before receiving regular appointments to that title from certification PS170567.

account for assignments that consumed more than 14 hours, which would have had the effect of reducing the audit attainment level required in order for him to achieve a satisfactory rating. As such, he argues that the appointing authority's statement that he did not reach an acceptable audit attainment level during the rating period ending September 30, 2016 is unsubstantiated. The appellant argues that he was placed into a situation where it was impossible to meet the requirements.

## 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).

Initially, since the appellant, a non-veteran, was listed in the third and second positions on the respective certifications, it was within the appointing authority's discretion to select any of the top three interested eligibles on the certifications for each vacancy filled. The appointing authority indicates that the appellant was bypassed on the basis of concerns over his work performance as an Auditor 2 documented in his PARs for the rating periods ending September 30, 2015 and September 30, 2016 respectively. Specifically, the appellant's supervisor noted on his 2015 PAR that the appellant's work was error-filled. The appellant's 2016 PAR showed no improvement and reflected that the manner in which the appellant wrote up his audits needed attention. He also did not reach an acceptable audit attainment level during the 2016 rating period and received an overall final rating of "Unsatisfactory" for that rating period. The Commission finds that the appointing authority has presented a reasonable basis for the appellant's bypass and that various arguments presented by the appellant in response are unpersuasive, as discussed below.

The appellant counters that he received an overall final rating of "Successful" for the 2015 rating period; however, this does not negate the specific concerns over the appellant's work documented by his supervisor on the 2015 PAR. Similarly, that certain of his assignments may not have been reviewed during the 2016 rating period does not negate the concerns documented regarding those assignments that *were* reviewed. On the issue of his audit attainment level during the 2016 rating period, the appellant counters that he was reassigned to a position held by a now-retired Auditor 3 and assigned to 100 complex audits, while the former Auditor 3 was held to a lower audit count; that the second and fourth ranked eligibles, who were serving provisionally in the title of Auditor 3, were also held to lower audit counts; and that his required audit attainment level should have been adjusted downward to account for assignments that consumed more than 14 hours of his time. However, reassignments are at the discretion of the appointing authority. *See N.J.A.C.* 4A:4-7.2. In addition, complex audits may be properly assigned to

individuals serving in the titles of Auditor 2 *and* Auditor 3 as such duties are within the scope of the job specifications for both titles. Moreover, Auditor 3 is a supervisory-level title, and the Commission notes that the presence of supervisory responsibilities may explain why individuals serving in that title could have been held to an audit count lower than that applied to individuals serving in the title of Auditor 2, such as the appellant. The appellant has otherwise not presented any substantive evidence that the purported disparities in the audit counts were inequitable. Further, the appellant's contention that his required audit attainment level should have been adjusted because some assignments took longer than 14 hours represents a mere disagreement with a performance criterion set by the appointing authority, which the Commission has no basis to second-guess in these matters.

Additionally, 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*; *In the Matter of Nicholas R. Foglio, Fire Fighter (M2246D), Ocean City*, 207 *N.J.* 38, 49 (2011). 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). Moreover, the appellant does not possess a vested property interest in the position. In this regard, 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). 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 the appellant's bypass that have not been persuasively refuted. Accordingly, a review of the record indicates that the appointing authority's bypass of the appellant's name was proper and the appellant has not met his burden of proof in these matters.

### **ORDER**

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>TH</sup> DAY OF APRIL, 2018



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