STATE OF NEW JERSEY

In the Matter of Uday Hiremath,
Software Development Specialist 3
(PS5440U), Office of Information
Technology

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

CSC Docket No. 2021-827

List Bypass Appeal

ISSUED: MAY 23, 2022 (SLK)

Uday Hiremath appeals the bypass of his name on the Software Development Specialist 3 (PS5440U), Office of Information Technology eligible list.

By way of background, the announcement for PS5440U indicated that in accordance with *In the Matter of Software Development Specialist 2 and Software Development Specialist 3, Office of Information Technology* (CSC, decided June 26, 2013), candidates who passed the examination would be selectively certified based on possession of the specific skillset(s) required for the position(s) to be filled as determined by the appointing authority. The appellant, a nonveteran, appeared on the PS5440U eligible list, which promulgated on June 23, 2020, and expires on July 22, 2023. A total of 15 names, including the appellant, were certified on September 3, 2020 (PS200543) for a position in the subject title. In response, the appellant indicated that he was interested in positions one, two, three, four and seven. The skillset needed for the position in question, position seven, was Natural (Structured Mode); IBM HATS (Host Access Transformation Services); ADABAS database; Job Control Language (JCL); TSO/ISPF or similar editing facility; EntireX; and IBM mainframe facilities utilities. The appointing authority returned the certification on November 30, 2020, indicating that it was requesting to appoint the two candidates who were tied for first ranked, to remove the third ranked candidate, to appoint the fourth, fifth and sixth candidates who were tied for fourth ranked, to indicate that one of the seventh ranked candidates was interested in future certifications only, to bypass the other seventh ranked candidate, the appellant, for other reasons, to

bypass the ninth ranked candidate for other reasons, to bypass the 10th ranked candidate, to bypass the 11th ranked candidate for other reasons, to appoint the 12th ranked candidate, to bypass the 13th and one of the 14th ranked candidates, and to appoint one of the 14th ranked candidates.[1] It is noted that this agency has not yet recorded the certification.[2] Based on the delay in recording the disposition of the subject certification, the Civil Service Commission (Commission) has agreed to review the subject appeal, notwithstanding that the certification has not been recorded.

On appeal, the appellant indicates that he is appealing his bypass in favor of appointing the 14th ranked candidate to position seven. He asserts that he possesses all the skills required for this position and should have been the first choice.

In response, the appointing authority presents that upon issuance of the certification, the selective certification administrator (administrator) requested managers to identify the skillsets that are needed for each position. After obtaining this information, the administrator issued a letter to all the certified employees, listing the available positions and the required skillsets. It explains that the certified employees then responded to the administrator indicating the positions that they were interested in. Thereafter, a structured, documented interview was conducted by at least two managers in the unit scope as well as the administrator or backup. It indicates that the administrator participated and recorded the interviews, but did not participate in the scoring. The appointing authority presents that the question format for skillsets was standardized. For example, a sample question would have been "describe your experience and training in COBOL" and the interviews were scored. Thereafter, the administrator tallied the scores and filtered the eligible list for each specific position and each position was treated as a separate eligible list. It notes that veterans preference and the "Rule of Three" were applied to each specific position. The appointing authority indicates that an employee within the top three for each specific position was appointed and the other candidates were bypassed using the disposition code B0, which stands for bypassed-other. Concerning the appellant, the appointing authority indicates that it bypassed him because he had less experience with HATS than the lower-ranked eligible who was appointed.

In reply, the appellant asserts that he has extensive experience with HATS as well as the mainframe and web, which enables him to provide excellent support for the Member Benefits Online System Loan application, which is critical for the

---

[1] Even though the certification has not been recorded, personnel records indicate that the candidates who the appointing authority requested to appoint on the certification have been permanently appointed in the subject title effective, November 21, 2020. However, since the subject certification has not been recorded, it is unclear as to why the appointments were made permanent as no permanent appointments should have been made until the certification's disposition was recorded.

[2] The Division of Agency Services (Agency Services) indicated that it has not recorded the subject certification as it needed more information from the appointing authority. However, as the certification was returned more than a year ago, it is unclear as to why Agency Services has not yet received the information that it needs from the appointing authority to record the disposition of the subject certification.

Division of Pensions and Benefits. He states that he is the primary person contacted when there is a HATS-related issue. The appellant provides emails to demonstrate that he responds to and resolves HATS issues. He submits documentation from the appointing authority's human resources that indicates that the appellant, who was one of the seventh ranked candidates, the ninth ranked candidate, the 11th ranked candidate, and one of the 14th ranked candidates were interviewed for position seven. Therefore, since there were four candidates for position seven and only the lowest ranked candidate was appointed, he believes that there was a "Rule of Three" violation. The appellant requests the list of questions that were asked to each interviewee, the interviewers' names, the information recorded by the administrator or backup, the score tallies for the four interviews, and any other "appropriate records" that are kept with the certification file.

CONCLUSION

Initially, it is noted that *N.J.A.C.* 4A:1-1.3 defines a promotion in State service as an advancement to a title having a higher class code than the former permanent title. At the time of the April 23, 2018, closing date, the appellant's permanent title was Software Development Specialist 2, which has a 26 class code. The subject title's class code is 29. Therefore, at the time the appellant applied for the subject examination, the subject title represented a promotion. However, personnel records indicate that on January 29, 2022, the appellant's permanent title was Data Processing Systems Programmer 1, which has a 29 class code. Therefore, because the appellant is in a permanent title that has the same class code as the title under test, the subject title does not represent a promotion, but rather a lateral move, and he, therefore, is no longer eligible for a promotion to that title from the subject eligible list regardless of his belief about his qualifications. Rather, if the appellant desires to be appointed to a position in the subject title, he would be required to undergo lateral title change procedures. *See N.J.A.C.* 4A:4-7.6.

Concerning the merits, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7 and *N.J.A.C.* 4A:4-4.8(a)3i allow an appointing authority to select any of the top three interested eligibles on an open competitive or promotional list provided no veteran heads the list. Additionally, *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 from an eligible list was improper.

A review of *In the Matter of Software Development Specialist 2 and Software Development Specialist 3, Office of Information Technology, supra,* indicates that candidates not possessing the skillsets necessary for any available vacancy may be bypassed on the certification in favor of a lower ranking eligible possessing the necessary skillsets. After skillsets are identified and verified, all normal selection processes including veterans preference and the "Rule of Three," were to be utilized to make selections among candidates possessing the requisite skillset.

In this matter, the subject vacancy required having skills in HATS, among other skills. A review of the information that was presented to this agency in support of the returned certification indicates that the appellant, who was tied as the seventh ranked candidate, indicated during the interview that he did not have much experience with HATS coding, the ninth ranked candidate had no HATS experience, the 11th ranked candidate's HATS experience was limited and it had been a while since he used HATS, and the appointed 14th ranked candidate used HATS on a regular basis for a Loans web application, created web services using a HATS utility to access the mainframe and to record macros on the mainframe and generate web services.

In the instant matter, it was within the appointing authority's discretion to select any of the top three interested eligibles for each appointment. Nevertheless, the appellant alleges that he possessed all the skills required for the subject position including extensive experience with HATS contrary to the appointing authority's statement. He argues that he should have been the first choice for the position, and there was a potential 'Rule of Three" violation since the fourth ranked candidate for this position was appointed while the top three ranked candidates were bypassed. However, while the appellant believes that he deserves to be appointed, consistent with *N.J.A.C.* 4A:4-4.8(a)3, the appointing authority had selection discretion under the "Rule of Three" to appoint a lower or same ranked eligible absent any unlawful motive. *See In the Matter of Michael Cervino* (MSB, decided June 9, 2004). In this case, the appointing authority presents lawful reasons for the appellant's bypass. Specifically, it presents that the appellant was bypassed because he indicated during the interview he did not have much experience in HATS coding. Therefore, even if the appellant disagrees with the appointing authority's characterization of his HATS skillset or the appointing authority misinterpreted the appellant's description of his HATS skills from the interview, the appellant has not alleged or provided any evidence that the appointing authority had any illegal or invidious motivation in its determination that the lowered ranked appointed candidate had a better skillset for the subject vacancy. Therefore, the appellant failed to meet his burden of proof that his bypass was improper.

Concerning the appellant's belief that there was a "Rule of Three" violation, the record indicates that the ninth ranked candidate has no HATS experience. Therefore, consistent with *In the Matter of Software Development Specialist 2 and Software Development Specialist 3, Office of Information Technology*, *supra*, the ninth ranked candidate should have been removed from the position seven eligible list. Further, after removing the ninth ranked candidate from consideration, there were three candidates who possessed at least some level of the required HATS skillset. Therefore, under the "Rule of Three," it was appropriate for the appointing authority to appoint the 14th ranked candidate who it determined had the highest HATS skillset.
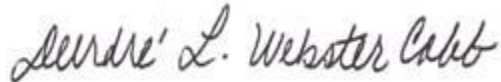
As previously noted, is unclear why Agency Services has been unable to close the subject certification. However, if the only remaining issues pertain to the issues that have been addressed in this appeal, it is suggested that Agency Services record the certification.

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 18TH DAY OF MAY, 2022

Deirdré L. Webster Cobb

_____
Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
 and
Correspondence

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

c: Uday Hiremath
    Dudley Burdge
    Lisa Blauer
    Division of Agency Services
    Records Center