



STATE OF NEW JERSEY

**DECISION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Chet Gantt, Laborer
3 (PM0694U), City of Camden

Bypass Appeal

CSC Docket No. 2017-1891

ISSUED: October 24, 2017 (ABR)

Chet Gantt appeals his non-appointment from the Laborer 3 (PM0694U), City of Camden (Camden) eligible list.

By way of background, agency records indicate that the subject examination was announced with a closing date of April 21, 2016. The subject eligible list, containing 11 names, promulgated on August 18, 2016. The appellant, C.S. and three other individuals were tied as the first ranked eligibles. However, since this agency does not break tied scores, non-veterans who receive the same score are listed alphabetically on the resulting eligible list. All 11 names, including the appellant's name, were certified to the appointing authority on August 22, 2016. In disposing of the certification on October 28, 2016, the appointing authority appointed C.S., one of the eligibles tied as the first ranked eligible with the appellant.

On appeal to the Civil Service Commission (Commission), the appellant argues that he was the most qualified candidate for the position, but was improperly denied an appointment because the appointing authority was unwilling to accommodate his inability to work between sundown on Friday and sundown on Saturday. He maintains that his religious beliefs as a Seventh Day Adventist require him to observe the Sabbath during that period and prohibit him from working during that timeframe. The appellant submits a copy of a Laborer 3 Questionnaire that he states the appointing authority required eligibles to complete during pre-employment processing. The questionnaire asks candidates if they possess a valid New Jersey Commercial Driver's License (CDL) and whether they

are “available to work nights, weekends and holidays when required.”¹ He argues that the appointing authority’s use of such a questionnaire evidences its invidious motive in declining to appoint him from the subject certification, as it was the first time that it asked eligibles for the title of Laborer 3 to complete such a questionnaire.

In response, the appointing authority maintains that C.S. was the strongest candidate. It indicates that a committee consisting of the Director of Public Works, Assistant Director of Public Works, Public Works Superintendent and Assistant Public Works Superintendent met with and interviewed the five eligibles ranked first on the subject certification. It submits that the committee members questioned each eligible about their perspective and insights on the job description and duties of the position, employment history and how they would handle the transition from being a crew member to supervising employees assigned to a crew. It states that the factors it considered in choosing who to appoint included interview performance, attendance, work history, performance evaluations, and possession of a CDL. It submits that two of the five eligibles ranked first on the subject certification were not considered for the subject vacancy because they did not possess a CDL. As to the remaining three candidates, the appointing authority maintains that it selected C.S. for appointment because the appellant and D.S., a Laborer 1, were “considered to be less complete in the overall factors” it weighed. The appointing authority’s response does not elaborate on how the appellant, C.S. and D.S. differed in the criteria it considered.

In reply, the appellant contends that his attendance record, experience and skills shows that that he was more qualified than C.S. and the other eligibles. As to his experience and skill set, he notes that he served as a Laborer 3 on an interim basis several times during the years preceding the subject appointment. With regard to attendance records, the appellant submits an email dated July 6, 2016 with the subject “Updated Late List” which states that C.S. was late by six minutes or more on eight occasions on or after March 14, 2016.²

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)3 allow an appointing authority to select any of the top three interested eligibles on a 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

¹ On the Laborer 3 Questionnaire, the appellant indicated that he was able to work at all times, including holidays, except for the period between sundown on Friday and sundown on Saturday, for which he “request[ed] reasonable accommodation for [his] sincerely held religious belief[s].”

² The appellant does not identify the sender or the recipient of the subject email and does not state how his own attendance record compared to that of C.S. or the other eligibles.

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

In cases of this nature where dual motives are asserted for an employer's actions, an analysis of the competing justifications to ascertain the actual reason underlying the actions is warranted. See *Jamison v. Rockaway Township Board of Education*, 242 N.J. Super. 436 (App. Div. 1990). In *Jamison*, *supra* at 436, 445, the Court outlined the burden of proof necessary to establish discriminatory and retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish retaliation by a preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-retaliatory reason for the decision. If the employer produces evidence to meet its burden, the complainant may still prevail if he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she has established a presumption of discriminatory or retaliatory intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the discriminatory or retaliatory motive. In a case such as this, where the adverse action is failure to promote, the employer would then have the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.

In the instant matter, the appellant appeared tied with C.S. and others as the first ranked eligible on the subject certification. The appellant argues that even though his attendance record, experience and skills demonstrate that he was the best candidate for this position, he was not appointed because the appointing authority was unwilling to accommodate his inability to work between sundown Friday and sundown on Saturday because of his religious beliefs. Thus, the appellant has established a *prima facie* case. The appointing authority claims that it appointed C.S. because he most closely satisfied its criteria for the open position while the appellant and D.S. were "considered to be less complete in the overall factors" of interview responses, attendance record, work history and performance evaluations. However, the appointing authority has not provided any evidence or arguments demonstrating how the appellant and D.S. were "less complete in the overall factors" than C.S. Moreover, the appointing authority does not address the appellant's assertion that this was the first time it asked eligibles for the title of Laborer 3 about their ability to work nights, weekends and holidays and what role, if any, their availability played a role in its decision to appoint C.S. In view of the foregoing, this matter evidences a dispute that cannot be resolved on the basis of the written record. Accordingly, the Commission finds it necessary to refer this matter to the Office of Administrative Law in order to develop a factual record as to whether the appellant's non-appointment from the August 22, 2016 certification of the Laborer 3 (PM0694U), City of Camden eligible list was based on legitimate

reasons or whether the appointing authority evinced invidious motivation in choosing not to appoint the appellant.

ORDER

Therefore, it is ordered that this matter be referred to the Office of Administrative Law for a hearing as a contested case. It is further ordered that the appointment of C.S. be designated conditional pending the outcome of this appeal.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF OCTOBER, 2017



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