

B-25



STATE OF NEW JERSEY

In the Matter of George Marx,
Supervising Public Safety
Telecommunicator (PC1155T),
Camden County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-447

Bypass Appeal

ISSUED: MAR 24 2017 (CSM)

George Marx appeals the bypass of his name on the Supervising Public Safety Telecommunicator (PC1155T), Camden County eligible list.

The appellant, a non-veteran, took the subject promotional examination, achieved a passing score, and was ranked #2 on the resultant eligible list. The appellant's name was certified to the appointing authority on May 16, 2016. In disposing of the certification on August 4, 2016, the appointing authority bypassed the appellant, who was listed in the second position on the PL160634 certification, and appointed the eligibles in the first, third, and sixth positions. The eligible in the fifth position indicated that she was interested in future certifications and the eligible in the fourth position was bypassed.

On appeal to the Civil Service Commission (Commission), the appellant questions how the eligible in the sixth position could be appointed. In this regard, he claims that the eligible in the fifth position indicated that she was interested in the position but then made the decision to decline after the Director and Chief had a meeting with all of the eligibles on the list advising that several additional duties were added to the position. Further, the appellant alleges that the eligible in the fifth position had a meeting with the Director where she voiced her concerns about the position and asked to be removed from consideration. As such, the appellant contends that the meetings were improper and meant to intimidate a few of the eligibles to decline the position in order for the appointing authority to reach lower level eligibles.

In response, the appointing authority explains that a panel consisting of the Cherry Hill Fire Department Fire Chief, Director of the Camden County Police Academy, a County Police Captain with the Camden County Police Department, a Chief from the Cape May County Communications Center, and the Camden County EMS Coordinator, conducted the interviews in January 2015. The process scored all candidates based on a maximum total of 240 points in four categories: discipline (20 points); Attendance (20 points); Operational Management and Written Scenarios (100 points) and the interview (100 points). As a result of this structured interview process, the appellant ranked fifth achieving 146.32 points. Further, the appointing authority states that since their appointments to Senior Public Safety Telecommunicator on September 28, 2010, three of the individuals not selected, including the appellant, were the subject of disciplinary action. Specifically, the appellant received a 40-hour suspension on July 31, 2012 on charges of incompetency, failure to perform duties, neglect of duty, and other sufficient cause. The fifth ranked eligible received a 40-hour suspension on December 20, 2011 for charges of incompetence, failure to perform duties, neglect of duty and other sufficient cause. Additionally, the fourth ranked eligible received an eight-hour suspension on November 22, 2011 on charges of incompetency, failure to perform duties neglect of duties, and other sufficient cause. However, none of the other eligibles had received any discipline prior to their appointments as Senior Public Safety Telecommunicators on September 28, 2010. Therefore, based on the interview process, his disciplinary record, and the fact that two of the appointees had extensive provisional experience, it bypassed the appellant.

Although provided the opportunity, the appellant did not present any additional argument or information for the Commission to consider in this matter.

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. *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 evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper. As long as that discretion is properly utilized, an appointing authority's decision will not be overturned.

Initially, since the appellant, a non-veteran, was the second listed name on the certification, it was within the appointing authority's discretion to select any of the top three eligibles on the certification. The appointing authority indicated that it selected the eligibles in the first, third, and sixth positions because they performed better during the interview, had extensive provisional service in the title, and had not been disciplined since they were appointed as Senior Public Safety

Telecommunicators on September 28, 2010. Conversely, the appellant and the candidates who were not selected had prior disciplinary infractions and did not perform as well during the interview process. Although the appellant claims that the meeting with the eligibles describing the additional duties assigned to the positions were designed to intimidate the top ranked eligibles to decline the positions, other than his mere allegations, he has not provided any evidence that the fifth ranked eligible declined the position because she was intimidated. Additionally, once the number five eligible indicated she was not interested in the position, the eligible in the sixth position became the next interested reachable eligible. *See In the Matter of Thomas D'Angelo* (MSB, decided October 22, 2003). Further, although provided the opportunity, he has not rebutted the appointing authority's explanation as to why the other eligibles scored higher on the interview. *See In the Matter of William Ippolitto* (CSC, decided June 26, 2013) (Since interviews are discretionary, lack of documentation or structure in the appellant's interview did not establish his bypass was improper as the hiring determination was made in compliance with Civil Service law and rules). Moreover, even assuming that a meeting took place to advise the eligibles of any additional duties associated with the position, this does not establish, by itself, that the appellant was bypassed for some invidious reason.

Additionally, 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). Other than his mere allegations, 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 which have not been persuasively refuted.

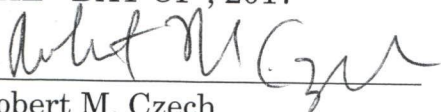
Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name was proper and the appellant has failed to meet his burden of proof in this matter.

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 , 2017



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