



STATE OF NEW JERSEY

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

In the Matter of Carrie Freeman-
Wright, Nutrition Program Specialist
3 (PS3100A), Department of
Agriculture

Bypass Appeal

CSC Docket No. 2017-1929

ISSUED: August 21, 2017 (ABR)

Carrie Freeman-Wright appeals the bypass of her name on the Nutrition Program Specialist 3 (PS3100A), Department of Agriculture (Agriculture), eligible list.

By way of background, S.S. was provisionally appointed, pending promotional examination procedures, to the title of Nutrition Program Specialist 3, effective April 30, 2016. As a result of her provisional appointment, the subject examination was announced with a closing date of July 21, 2016. The appellant and three other applicants, all non-veterans, took the subject promotional examination and achieved passing scores. The subject eligible list, containing four names, promulgated on November 10, 2016 and expires on November 9, 2019.¹ All four names were certified to the appointing authority on November 10, 2016 (PS161529). In disposing of the certification on January 12, 2017, the appointing authority appointed T.B., the eligible in the first position, and S.S., the eligible in the fourth position.

On appeal to the Civil Service Commission (Commission), the appellant argues that she should have been selected for appointment, as she was the most qualified candidate and possesses veteran status.² The appellant maintains that

¹ The appellant and T.B. were tied as the first ranked eligibles on the subject eligible list. However, since this agency does not break tied scores, non-veterans who receive the same score are listed alphabetically on the resulting eligible list.

² Agency records indicate that the appellant established veterans preference on or about December 21, 2016.

she was the only candidate with post-graduate degrees, having earned a Master's degree in Management/Human Resources Management and a Doctorate in Business Administration after attaining a Bachelor's degree in Food and Nutrition. Additionally, the appellant claims that, among all of the eligibles, she has the most seniority within the Child and Adult Care Food Program (CACFP) Unit and the most overall professional experience with State and local agencies. She indicates that she has served with the CACFP Unit for over 14 years. The appellant notes that her duties have included serving as the Coordinator of the Family Day Care Food Program (FDCFP), supervising and training CACFP Unit staff, working with the C.A.R.E.S. Online System, serving as an "acting" Coordinator for the CACFP Unit, and serving as a Training Facilitator at Statewide events. She also notes that she is a Certified Dietary Manager. As a result, she argues that she is more familiar with CACFP Unit programs than both S.S. and T.B., particularly the Summer Food Service Program (SFSP). She states that as of April 2017, she was assigned to teach S.S. and CACFP Unit staff about the FDCFP and was also tasked with retraining staff about CACFP policies and procedures. She also contends that T.B. lacked knowledge of the SFSP. The appellant also maintains that, notwithstanding S.S.'s eligibility for the subject examination based upon her grandfathered status³, S.S.'s lack of a Bachelor's degree from an area of study specified in the announcement should have precluded S.S. from being appointed to the subject title ahead of her. Furthermore, the appellant maintains that her supervisor had been grooming her for the Nutrition Program Specialist 3 title since the appellant began her employment with Agriculture.

The appellant also contends that there were issues with the manner in which her interview was conducted, as the interview panel did not ask her the same questions that it presented to S.S. and T.B. Specifically, the appellant contends that the previous CACFP supervisor, T.J., formerly a Nutrition Program Specialist 3 with Agriculture, "brought bias to the process" by asking her questions about "the Blackberry phone, catchphrases, and various past exchanges [that she and T.J.] had over 16 years working together," which were not topics that were not raised during T.B.'s and S.S.'s interviews.

In response, the appointing authority argues that the appellant did not have veterans preference status on the subject certification, as she did not timely establish it in accordance with *N.J.A.C.* 4A:5-1.3. As to its selection process, it states that while education, training and experience were factors it considered, its

³ Applicants for the subject examination were required, in part, to possess a Bachelor's degree in Nutrition, Food Service Management, Dietetics, Food Science, Food Technology, Home Economics, or other area of study related to nutrition. S.S. possesses a Bachelor's degree in Business Administration, but was deemed eligible for the subject examination because she was grandfathered following a change to the State Classification Plan, which rendered her former title of Program Development Specialist 2, Child Nutrition, inactive and resulted in her lateral appointment to the title of Nutrition Program Specialist 1, effective January 1, 2011. See *In the Matter of Nutrition Program Specialist Title Series* (CSC, decided October 5, 2011).

choice of T.B. and S.S. for permanent appointments to the subject title was based, in large part, upon the interview process. It proffers that education, training and experience do not automatically make one eligible a better candidate for a position than another. It advises that, given the nature of the work of a Nutrition Specialist 3, candidates need to demonstrate creativity, motivation, and an understanding of practical approaches to team management, as overreliance on theoretical or intellectual approaches can often inhibit teamwork. As to the conduct of the interview, the appointing authority asserts that each candidate had the same interview panelists, including T.J., from the Food and Nutrition Division.⁴ It submits a copy of its interview questions and advises that all candidates were asked the same questions during their interview, but that the interviewers may have asked follow-up questions to each candidate that differed based upon the candidates' responses to the prepared questions.

The appointing authority states that the appellant's interview responses reflected more of an internal focus and did not demonstrate the kind of forward-thinking ability or recognition of new approaches and ideas that T.B. and S.S. demonstrated. It contends that the appellant emphasized her professional and educational accomplishments and did not elaborate on program and management issues she saw or challenges she associated with the position. For example, it maintains that while T.B. and S.S. were more specific in discussing ideas for the entire CACFP, what challenges they saw, and how they would approach supervising their former peers, the appellant merely indicated that there "would be no challenges for her but opportunities." The appointing authority indicates that the appellant's responses did not convey a strong vision for improving CACFP outreach efforts overall, as she only spoke to past outreach efforts with the FDCFP within the CACFP Unit and did not discuss other CACFP Unit programs. In contrast, it states T.B. offered details such as how she would approach her new title, assess challenges, craft goals and objectives, implement directives, facilitate team cooperation, and improve communication between supervisors and lower-level staff. Similarly, it maintains that S.S. provided strong responses during the interview process which highlighted her forward-thinking ability, problem-solving skill set and leadership skills. It adds that S.S.'s provisional service in the subject title was also a significant factor in selecting her for appointment. It stresses that although the Bachelor's degree S.S. possesses is not in a major related to Nutrition, she was eligible for promotion to the subject title, based upon her grandfathered status.

In reply, the appellant acknowledges that, given her post-graduate experience, she provided more of an analytical approach in her interview. She adds that she focused on past professional and educational accomplishments because many of the interview panel's questions focused on self-exploration. The appellant

⁴ The appointing authority notes that a different Human Resources Office (HR) representative from the one who attended the appellant's and S.S.'s interviews was present at T.B.'s interview. However, it claims that the HR representatives did not participate in the selection process.

also claims that her answers included an “external perspective and the internal customer (employees)” and that she also discussed specific functions that she facilitates. As to her emphasis on examples from and suggestions for the FDCFP, she argues that the same management theories, practices and functional roles would apply to all other CACFP Unit programs. She also proffers that her experience includes leading outreach trainings that increased participation in CACFP, implementing procedures to improve efficiency and interagency partnerships, and collaborating on program expansion efforts with S.S. However, she claims that the interview panel only provided her with a limited opportunity to discuss items such as staff motivation, management approaches, and team thinking. Nevertheless, she contends that her discussion of personal and work experiences highlighted her time management skills, multi-tasking ability and high-level thinking capacity.

CONCLUSION

N.J.A.C. 4A:4-4.8, *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.

At the outset, the appellant’s veterans preference does not apply for the subject eligible list because veterans preference is prospective in nature and her veterans preference was not established until after the promulgation date for the subject eligible list. *See N.J.A.C.* 4A:5-1.3; *See also In the Matter of Daniel Donnerstag* (CSC, decided August 17, 2012) (Permitting eligibles to establish the preference eight days prior to the issuance of eligible lists expanded the window of opportunity for veterans to enjoy the benefits of that preference for examinations, but also ensured that appointing authorities would be able to rely on the issued lists, without the lists being continuously updated with changed rankings of eligibles who established veterans preference after the list was issued). Accordingly, the appellant was correctly listed as a non-veteran on the subject eligible list.

The appointing authority has indicated that it selected T.B. and S.S. for permanent appointment to the subject title on the basis of their interview performance. It also indicates that S.S.’s provisional service in the subject title since April 2016 was also a factor in her selection for a permanent appointment. It is noted that, on appeal, the appellant does not suggest that her bypass was motivated by an invidious reason. It is also noted that since none of the eligibles

had established veterans preference as of the November 10, 2016 certification date, it was within the appointing authority's discretion to select any of the three interested eligibles for each appointment. *See N.J.A.C. 4A:4-4.8(a)3*. Thus, even assuming, *arguendo*, that the appellant was more qualified for the position at issue, the appointing authority still had selection discretion under the "Rule of Three," absent any unlawful motive. *See id.*; *In re Foglio*, 207 N.J. 38, 49 (2011). In reviewing this matter, the Commission finds no evidence that the appellant was bypassed for an unlawful reason. As such, the appointing authority's selection of T.B. and S.S. on the basis of their interview performance was a permissible exercise of its discretion. *See In the Matter of Paul Mikolas* (MSB, decided August 11, 2004) (Structured interview utilized by appointing authority that resulted in the bypass of a higher ranked eligible was based on the objective assessment of candidates' qualifications and not in violation of the Rule of Three). In this regard, although the appellant claims she was not asked the same questions during the interview, the appointing authority explains that all candidates were asked the same questions and it was the follow-up questions, which were based on the candidates' responses, that may have varied. Furthermore, the appointing authority notes that the appellant's answers reflected a more internal focus, instead of a recognition of new approaches and an identification of challenges.

Moreover, the appointing authority's bypass of the appellant and selection of S.S. for permanent appointment on the basis that she already held the title provisionally was a permissible exercise of its discretion. *See In the Matter of Terrence Crowder* (CSC, decided April 15, 2009) (The Commission noted that it was reasonable for appointing authorities to select provisional appointees reachable under the "Rule of Three" for permanent appointments on the basis of their status as provisional appointees in the subject title). The mere fact that the appellant possesses certain education, training or experience does not automatically make the appellant a better candidate than the other interested eligibles, who were both reachable in accordance with the "Rule of Three." *See In the Matter of William Davis* (CSC, decided November 10, 2016). Therefore, the appointing authority properly exercised its discretion in accordance with the "Rule of Three" to select T.B. and S.S. for permanent appointments to the subject title.

Finally, the Commission emphasizes that individuals whose names merely appear on a list do not have a vested right to appointment. *See In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). 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 Nutrition Program Specialist 3 (PS3100A), eligible list was proper and the appellant has failed to meet her 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 16TH DAY OF AUGUST, 2017



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