



## STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Josephine Erndl,  
Principal Parole Counselor  
(PS4623I), State Parole Board

Bypass Appeal

CSC Docket No. 2017-2203

ISSUED: SEP 21 2017 (EG)

Josephine Erndl appeals the bypass of her name on the Principal Parole Counselor (PS4623I), State Parole Board eligible list.

The appellant appeared as the tenth ranked non-veteran eligible on the subject eligible list, which promulgated on September 5, 2013 and expired on September 4, 2017. A certification was issued on August 31, 2016 (PS161180). The appellant was listed in the sixth position on the certification. In disposing of the certification, the appointing authority removed eligibles one through four, bypassed the fifth listed non-veteran eligible and the appellant, and appointed the seventh listed non-veteran eligible.

On appeal to the Civil Service Commission (Commission), the appellant argues that the bypass of her name was inappropriate and states that she was the better candidate for appointment. She states that she has worked for the appointing authority for over nine years and over the years she has had to perform the duties of her supervisor, a principal parole counselor, during his frequent absences. In support of her assertions, the appellant submits her performance assessment reviews (PARS) which indicate numerous significant events for filling in her for supervisor during his absences. She also submits a letter recommending her for the present position from her now retired former supervisor. Additionally, the appellant contends that before working for the State Parole Board, she held several managerial positions. She asserts that since the Principal Parole Counselor title is a supervisory position, her previous work as a manger gives her an edge over someone who does not possess such experience. Further, she argues that the

eligible appointed to the position had an unfair advantage as the head of the hiring committee worked regularly at the institutions where the hired applicant worked but never worked where the appellant was assigned. In this regard, the appellant asserts that the head of the hiring committee had a chance to get to know the appointed eligible on a more personal level, which led to an unfair advantage for the appointee and a bias against the appellant.

In response, the appointing authority states that it interviewed several candidates and that the candidate selected stood out more than the appellant during the interview process.

### 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 the second listed interested eligible name on the certification,<sup>1</sup> it was within the appointing authority's discretion to select any of the top three interested eligibles on the certification for each vacancy filled. The appointing authority indicates that the appellant was bypassed because the candidate selected stood out more than the appellant during the interview process. In this regard, it was within the appointing authority's discretion to choose its selection method, *i.e.*, whether or not to interview candidates and ask hypothetical questions. See *e.g.*, *In the Matter of Angel Jimenez* (CSC, decided April 29, 2009); *In the Matter of Abbas J. Bashiti* (CSC, decided September 24, 2008); *In the Matter of Paul H. Conover* (MSB, decided February 25, 2004); *In the Matter of Janet Fotocki* (MSB, decided January 28, 2004). An appointing authority is permitted to interview candidates and base its hiring decisions on the interviews, so long as the hiring decisions are in compliance with *N.J.A.C. 4A:4-4.8(a)3ii*. See *In the Matter of William Ippolitto* (CSC, decided June 26, 2013); *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"). Further, the appellant has provided no substantive evidence other than mere allegations that the candidate that was appointed received an advantage just because she worked in a facility where the head of the hiring committee worked on occasion or that the interviews were otherwise biased.

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<sup>1</sup> Eligibles one through four, whom were removed from the list, were not considered interested or eligible for appointment.



Additionally, the appellant has argued that she was more qualified for the position based on her work history with the appointing authority and her prior managerial work. However, 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, as the appellant does not possess a vested property interest in the position, her claim of harm is unpersuasive. 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 her 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 a legitimate reason for the appellant's bypass that has not been persuasively refuted.

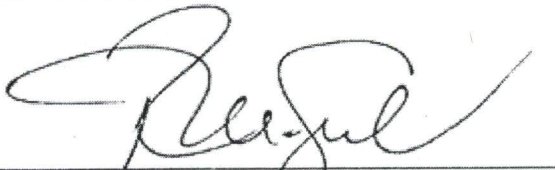
Accordingly, a review of the record indicates that the appointing authority's bypass of the appellant's name was proper and the appellant has not met her burden of proof in this matter.

### 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 20TH DAY OF SEPTEMBER, 2017

A handwritten signature in black ink, appearing to read "R. Czedo", is written over a horizontal line.

Robert M. Czedo, Chairperson  
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