



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Jill Giannini,
Sheriff's Officer Sergeant (PC2636V),
Burlington County Sheriff

Bypass Appeal

CSC Docket No. 2019-1967

ISSUED: AUGUST 16, 2019 (HS)

Jill Giannini appeals the bypass of her name on the Sheriff's Officer Sergeant (PC2636V), Burlington County Sheriff eligible list.

The appellant appeared as the first ranked eligible on the subject eligible list, which promulgated on December 13, 2018 solely with the names of non-veteran eligibles and expires on December 12, 2021. A certification was issued on December 18, 2018 (PL181631) with the appellant listed in the first position. In disposing of the certification, the appointing authority bypassed the appellant and the fourth listed eligible, a male. It appointed M.W., a male, and S.F., a male, respectively the second and fifth listed eligibles, effective January 28, 2019. X.C., a female, the third listed eligible, was removed due to a late response to the certification notice.¹ The remaining eligibles were either removed or retained.

On appeal to the Civil Service Commission (Commission), the appellant contends that her bypass was due to preferential treatment and gender bias. She maintains that she is well-qualified for the position.

In response, the appointing authority states that there are a number of reasons that the appellant was not selected for the position, some of which were conveyed to the appellant in a meeting on February 1, 2019. Although the appellant is, according to the appointing authority, an excellent canine handler and is involved with many community programs on an overtime basis, she does not

¹ Agency records indicate that X.C. appealed her removal and was restored to the eligible list.

demonstrate initiative or problem-solving abilities in her daily work and relies on others to handle the simplest of tasks. It states that it was looking for Sheriff's Officer Sergeants who can work independently with little supervision and its experience with the appellant over the past 20 years has not impressed it with her abilities in this regard. In addition, the appointing authority points to *In the Matter of Jill Giannini and James Parton, Burlington County Sheriff's Department* (CSC, decided March 16, 2011), in which the Commission upheld the appellant's 10 working day suspension for her failure to stop another officer from mimicking disabled persons in September 2008, though she was aware of the conduct, and her false statement to Internal Affairs in denying knowledge of the officer's conduct. It also notes that the appellant received a counseling notice on September 13, 2016 for taking an inappropriate photograph of herself and two other uniformed officers at a post during work hours and publishing it on Facebook. She also received a counseling notice on August 31, 2017 for a confrontational exchange she had with her canine trainer in front of other officers. The appointing authority maintains that the selected candidates have had long and successful careers during which they have demonstrated the initiative and good judgment expected. In support, the appointing authority submits, among other documents, a memorandum describing the reasons for the appellant's bypass discussed with her on February 1, 2019.²

In reply, the appellant reiterates her claim that the appointing authority made promotions based on preferential treatment and gender bias. She states that discipline was not mentioned during the February 1, 2019 meeting. The appellant maintains that she does take initiative. For example, she cites a March 10, 2017 e-mail congratulating her for a job well done qualifying for the U.S. Police Canine Association Region 15 competition, placing in the top two and earning the National Bomb Dog certification and an April 6, 2017 e-mail congratulating her on a "phenomenal" job placing third in the U.S. Police Canine Association 2017 Detector Dog National Trials and Field Certification. The appellant maintains that she is a problem-solver. For example, she cites a letter from the Director of the Burlington County Board of Social Services commending the appellant and another officer for resolving a transportation issue for a stranded homeless person on February 24, 2009. The appellant was also commended for "seizing initiative" during that incident. She states that she does work independently. For example, she notes her service as a canine handler and cites a departmental policy that discusses the criteria for selection as a canine handler. The policy provides that an officer seeking such appointment

[s]hould be self-motivated, energetic, resourceful, alert, and throughout his or her career have demonstrated perseverance and initiative, as well as the mental and physical ability to withstand the rigors and tensions associated with dangerous and/or volatile incidents.

² It is noted that the appellant's 10-day suspension and counseling notices are not specifically referenced in the memorandum.

As to the issue of discipline, the appellant states that the appointing authority has, in the past, promoted officers who have received discipline. For example, S.H., a male, was promoted to Sheriff's Officer Sergeant on January 10, 2011 after having served a five-day suspension, effective July 24, 2006, for an improper vehicular pursuit. The appellant also claims that S.F. told her that he was disciplined for a security breach. She notes that the counseling notices she received are not discipline. The appellant also cites numerous other commendations she has received:

- On January 25, 2010, the appellant was commended for her participation on a United Way committee and “representing our department in such a positive manner.”
- On January 14, 2011, the appellant was commended for discovering a weapon during a hand scan with “a keen eye and a diligence on [her] behalf.” The appellant’s actions were “a sign of an Officer with considerable experience and confidence.”
- On April 29, 2011, the appellant was commended for her “professional and effective actions” when she was placed in charge of control room duties while all supervisors were in a meeting. The appellant “calmly” handled schedule revisions, a medical emergency and a “volatile” employee situation.
- On August 13, 2012, the appellant was commended for “taking the initiative” in responding to a critical medical situation with “swift action.”
- On November 27, 2012, the appellant was commended for her service during Hurricane Sandy and showing “initiative.”
- On December 19, 2012, the appellant was commended for her participation in the Equestrian Mentoring Program and for providing the children with a “caring and professional role model.”
- On January 30, 2013, the appellant was commended for helping to instruct a presentation on local gangs and their effect on teens.
- On June 25, 2014, the appellant was again commended for her participation in the Equestrian Mentoring Program.
- On May 3, 2016, the appellant was commended for giving a demonstration during a “Bring Your Child to Work Day” on a scheduled vacation day.
- On December 3, 2018, the appellant was commended for helping a park event “turn[] out very well” despite difficult weather conditions.
- On December 12, 2018, the appellant was commended for her contributions to the Equestrian Mentoring Program. “[I]t did not go unnoticed when [the appellant] would complete . . . tasks and still bring new ideas and a positive attitude to each class.”

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).

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 445, the court outlined the burden of proof necessary to establish discriminatory or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination or 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-discriminatory or 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 this matter, the appellant appeared as the first ranked eligible on the certification. The appellant argues that even though she was well-qualified for the position, she was bypassed in favor of two males due to preferential treatment and gender bias. The appointing authority maintains that the appellant does not demonstrate initiative or problem-solving ability, whereas the appointees have demonstrated the initiative and good judgment expected during their long and successful careers. It states that it has not been impressed with the appellant's ability to work independently with little supervision. The appointing authority also points to the appellant's 10-day suspension and counseling notices.

The appellant disagrees with the appointing authority's assessment and cites commendations she has received, some of which do suggest that she has taken initiative, problem-solved and worked independently. For example, she was commended for resolving a transportation issue for a stranded homeless person while "seizing initiative" in doing so; discovering a weapon during a hand scan with actions that were "a sign of an Officer with considerable experience and confidence;"

“professional and effective actions” when she was placed in charge of control room duties while all supervisors were in a meeting, during which she handled schedule revisions, a medical emergency and a “volatile” employee situation; “taking the initiative” in responding to a critical medical situation with “swift action;” showing “initiative” during Hurricane Sandy; contributing to the success of a park event despite difficult weather conditions; and “bring[ing] new ideas” to a mentoring program. She notes that she is a canine handler and points to departmental policy providing that officers seeking to serve in such a role “[s]hould be self-motivated, energetic, resourceful, alert, and throughout his or her career have demonstrated perseverance and initiative.” In addition, during the February 1, 2019 meeting, the appellant’s 10-day suspension and counseling notices were apparently not specifically communicated to the appellant as contributing to the decision to bypass her. Moreover, beyond the appointing authority’s general statement that the appointees have demonstrated the initiative and good judgment expected during their long and successful careers, there is a dearth of information in the record as to their qualifications.

Based on the foregoing, a dispute of fact exists in this case regarding the reasons for the bypass of the appellant’s name on the certification. Accordingly, under these circumstances, where it is not possible to determine on the written record whether the reasons for the bypass of the appellant’s name were proper, this matter should be referred to the Office of Administrative Law for a hearing.

ORDER

Therefore, it is ordered that this matter be referred to the Office of Administrative Law for a hearing.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 14TH DAY OF AUGUST, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c. Jill Giannini
Dianne L. Jassmann
Kelly Glenn
Beth Wood (w/ file)
Records Center