



STATE OF NEW JERSEY

In the Matter of Karlene Mullings,
Administrative Supervisor of Family
Services (PC0561A), Essex County

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

CSC Docket No. 2021-175

List Bypass Appeal

ISSUED: OCTOBER 23, 2020 (SLK)

Karlene Mullings, represented by Lisa Maddox-Douglas, President of the Public Employees Supervisors’ Union, appeals the bypass of her name on the Administrative Supervisor of Family Services (PC0561A), Essex County eligible list.

By way of background, the appellant, a nonveteran, appeared on the PC0561A eligible list, which promulgated on February 20, 2020 and expires on February 19, 2022. The appellant’s name was certified on PL200265 for a position in the subject title. The first ranked candidate was appointed, the appellant, the second ranked candidate was bypassed, and the third-ranked candidate was appointed.

On appeal, the appellant states that the subject certification was not disposed timely. Further, the appellant indicates that the appointing authority’s Acting Division Head failed to acknowledge her grievance where she claimed that she was bypassed on multiple certifications for a position in the subject title based on discriminatory practices. Instead, the Acting Division Head advised that she was exercising her managerial right. The appellant asserts that she was bypassed for an employee with less seniority within the current title and within the division. Moreover, the appointing authority and the Acting Division Head failed to adequately provide merit-based reasons for the appellant’s bypass on the subject certification as well as prior certifications. The appellant submits a statement that she presented to her union where she states that approximately two years ago, she was the seventh ranked candidate on a certification for the subject title and the first through sixth ranked candidates were appointed, she and another candidate were bypassed, and

the ninth ranked candidate was promoted.¹ She states that no explanation was provided as to why she was bypassed for a lower ranked candidate. Thereafter, she was the second ranked candidate on the subject certification and the first and third ranked candidates were appointed. She asserts that in both cases, no reason was given as to why she was bypassed for lower ranked candidates with less experience. She claims that these bypasses were made without regard to established rules in place for a fair and equitable selection process. The appellant presents that this situation is impacting her health.

The appellant indicates that she is currently serving as an Assistant Supervisor and has been with the appointing authority for 26 years, mostly serving in a supervisory capacity. The appellant asserts that her performance evaluations have been exemplary, and she has no applicable discipline. Therefore, the appellant believes that discriminatory practices were used in the selection/appointment process in violation of *N.J.A.C.* 4A:7-3.2.² The appellant also cites several regulations that concern certifications, which she thinks may have been violated.³ She states that should her allegations be substantiated, she requests a retroactive appointment to July 27, 2020, which is the date that the subject certification's disposition was recorded.

Although given the opportunity, the appointing authority has failed to respond.

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)3i allow an appointing authority to select any of the top three interested eligibles on an open competitive 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 preponderance of the evidence that an appointing authority's decision to bypass the appellant from an eligible list was improper.

Initially, it is noted that any claims regarding past bypasses are untimely as the appellant needed to appeal such bypasses within 20 days as to when she knew or should have reasonably known she was bypassed. See *N.J.A.C.* 4A:2-1.1(b). It is also noted with the repeal of the former *N.J.A.C.* 4A:4-4.8(b)4, the appointing authority did not have any obligation to provide a reason for its bypass at the time the certifications were disposed. It is only on appeal that the appointing authority needed

¹ It is unclear which certification the appellant is referencing as a review of agency records do not match the appellant's statement.

² It is noted that the State Policy Prohibiting Discrimination in the Workplace under *N.J.A.C.* 4A:7-3.2 only applies to State employees. As the appellant is a County employee, the State Policy is not applicable in this matter.

³ The appellant cites *N.J.A.C.* 4A:4-4.1, *N.J.A.C.* 4A:4-4.2, and *N.J.A.C.* 4A:4-4.3, however, she has not clearly articulated how these regulations were allegedly violated.

to provide a statement of reason regarding its bypass. *See In the Matter of Ryan Morgan* (CSC, decided November 21, 2018). Additionally, there is no evidence in the record that the appointing authority violated any regulations concerning the disposition of the subject certification. Further, considering the current public health pandemic, it was reasonable that the appointing authority was not making any appointments in the earlier part of the pandemic and only returned the certification when conditions were such that it was in position to make appointments.⁴

In this matter, the appellant states that she was bypassed for a candidate with less seniority within the current title and the division. Additionally, she presents that she has received exemplary performance evaluations and has no applicable discipline. As the appointing authority has not responded, the Civil Service Commission (Commission) has no reason to not accept the appellant's statements as true. However, even with this background, under the Rule of Three, the appointing authority had the authority to appoint a lower-ranked, less experienced reachable candidate, if that appointment was based on legitimate business reasons and not based on discrimination or some other invidious motivation. Further, the appointing authority had an obligation to provide its statement of reason for the bypass on appeal, but failed to do so. *See In the Matter of Nicholas R. Foglio* (CSC, decided February 22, 2012). However, the appellant has not provided any actual evidence that the appointing authority's actions were based on discrimination or other invidious motivation. It is noted that the Commission is not an investigatory agency and cannot substantiate the appellant's allegation without evidence, and the appellant has the burden of proof. 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.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

⁴ The appellant submits an email between this agency and the appointing authority which explains that the disposition of the subject certification was delayed due to a hiring freeze during the earlier part of the current public health pandemic.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21ST DAY OF OCTOBER 2020

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