



**STATE OF NEW JERSEY**

In the Matter of Shreekk Crawford,  
County Correctional Police  
Lieutenant (PC2070U), Essex County

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

CSC Docket No. 2021-438

List Bypass Appeal

**ISSUED: FEBRUARY 23, 2021 (SLK)**

Shreekk Crawford, represented by Ben Weathers, Esq., appeals the bypass of his name on the County Correctional Police Lieutenant (Lieutenant) (PC2070U), Essex County eligible list.

By way of background, the appellant, a nonveteran<sup>1</sup>, appeared on the PC2070U eligible list, which promulgated on August 24, 2017 and expires on August 23, 2021. The appellant's name was certified on PL200635 for a position in the subject title. The first ranked candidate was appointed, the appellant, the second ranked candidate was bypassed, the third-ranked candidate was appointed, the fourth and fifth ranked candidates were removed, the sixth ranked candidate was bypassed, and the seventh ranked candidate was appointed.

On appeal, the appellant certifies that he has been employed by the Essex County Department of Corrections for 15 years and was promoted to County Correctional Police Sergeant (Sergeant) in February 2012. He presents that PL200635 was the second certification for the subject list and he was the second ranked candidate on this certification. The appellant indicates that at the time the PL200635 certification was issued, there were four vacancies for the subject title.

<sup>1</sup> On appeal, the appellant indicates that he is a veteran. However, the record does not indicate that he is a veteran for the purposes of veteran's preference rights under *N.J.A.C. 4A:5-2*, nor has the appellant argued that he is entitled to such rights.

However, he indicates that only three have been filled. The appellant states that he interviewed for appointment in the subject title on August 13, 2020. However, on that same date, he received an e-mail announcing the promotions, effective August 22, 2020, and his name was not on that list. The appellant indicates that he was not provided an explanation as to why his name was bypassed on the subject certification.<sup>2</sup>

In response, Essex County, represented by Courtney M. Gaccione, County Counsel, states that under *N.J.A.C. 4A:4-4.8* which incorporates the “Rule of Three,” it had the discretion to choose who it considers the best candidate and bypass the appellant on the subject certification. Specifically, the appellant was bypassed because within the past 12 months of the promotional cycle, he was found guilty of insubordination<sup>3</sup> and has three charges<sup>4</sup> which are currently proceeding through the disciplinary process. Therefore, the Deputy Director found that the appellant’s actions indicate his inability to lead others by example at this time.

In reply, the appellant claims that the recent and pending disciplinary matters against him were motivated by retaliation and discrimination based on race. He presents that he is an African-American male and that Essex County’s stated reasons for the bypass were pretextual and that he is entitled to a hearing of this matter in the Office of Administrative Law (OAL). The appellant presents that he is an Army and Army National Guard Veteran, and he possesses a Bachelor’s degree in Criminal Justice and Psychology, a Master’s degree in Education, and an Education Specialist degree, which includes a certification in Human Resources and Training in Development. Additionally, he is a Paramedic and is a certified Fire Fighter who has served with several volunteer fire departments.

The appellant states that on October 18, 2019, he received a Preliminary Notice of Disciplinary Action (PNDA) for insubordination. However, he claims that he was only charged with this offense after he exposed that the charging Lieutenant was involved in an extramarital affair with an Assistant County Counsel, who was to be prosecuting the matter at the departmental level. The appellant notes the he was charged just one day after his interview for Lieutenant, even though the alleged incident took place on September 7, 2019, and the investigation concluded on

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<sup>2</sup> 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 certification was disposed. It is only on appeal that an appointing authority is required to provide a statement of reason regarding its bypass. *See In the Matter of Ryan Morgan* (CSC, decided November 21, 2018).

<sup>3</sup> The appellant was issued a Final Notice of Disciplinary Action sustaining the charges and suspending him for 30 working days. Agency records indicate that the appellant appealed to the Civil Service Commission and the matter has been transmitted to the Office of Administrative Law a contested case, where it is pending.

<sup>4</sup> On August 5, 2020, the appellant was issued a Preliminary Notice of Disciplinary Action seeking his removal for various administrative and departmental charges. The notice indicates that a departmental hearing was to be held on September 2, 2020; however, Essex County indicates that the matter is still proceeding at the departmental level.

September 23, 2019, some 35 days after the fact. He claims the now Deputy Director said during the interview, "It's obvious that all of your degrees don't make you smart" in reference to the alleged affair. Additionally, the appellant states that he was charged with insubordination on October 16, 2019 for allegedly failing to write a report. However, he states that he failed to write the report because he was ill and the department's doctor sent him to the emergency room. He explains that departmental policy allows for a report to be submitted on the officer's next tour of duty if ill. The appellant claims that County Counsel informed the Union that regardless of the Hearing Officer's recommendation, he was going to receive a 30-day suspension, which could be appealed to the Civil Service Commission (Commission) and transmitted to the OAL for a hearing. He submits a statement from the President of the Union that indicates in his duty overseeing all superior officer discipline for the past five years, no superior officer was given greater than a five-day suspension for insubordination, and therefore, he believes that the 30-day suspension issued against the appellant was unusual and excessive.

The appellant presents that on August 6, 2020, just one day after his second interview for Lieutenant, he was charged with three different alleged incidents that occurred on May 7, 2019 and May 11, 2019. He indicates that the Prosecutor's Office indicated that there was insufficient evidence to support a criminal charge. Additionally, the appellant states that these matters were never formally investigated. Instead, "After Action Reviews," which are required to be conducted within 24 hours of an alleged incident of use of force to identify negatives and potential departmental policy violations were conducted, which are not intended for disciplinary purposes. He indicates that he was charged with not getting inmates medical attention within 20 and 30 minutes and leaving an inmate in handcuffs for over an hour. The appellant describes certain details to explain why he believes these charges are unwarranted. He notes that due to the most recent charges, he was stripped of his service weapon and the privilege to work off-duty and he has been essentially put in an administrative position, despite there not being any policies to support these restrictions. The appellant states that there is no department policy precluding an employee from being promoted within 12 months of pending discipline and he presents a Caucasian male and an African-American female who had been promoted despite recent discipline as well a Caucasian male who had been promoted after a recent driving while impaired conviction.

The appellant asserts that minorities are more likely to be bypassed as he states that three Captains were promoted bypassing a Hispanic male and 10 Lieutenants have been promoted including four Caucasian males, two African-American females, two Hispanics, one Jamaican and one African-American male, who he states was initially bypassed and only promoted after filing a tort claim against Essex County which was later resolved by the parties. Further, he presents that 18 Sergeants were promoted where three minorities were bypassed and only one Caucasian male was bypassed. The appellant states that an African-American female who was bypassed for a Sergeant position filed a tort claim against Essex

County, which was resolved by the parties. He notes that he was one of three African-American males who were bypassed for promotion to Lieutenant on August 13, 2020. The appellant indicates that two Hispanic males, one for Captain and one for Sergeant, and two African-American males, both for Lieutenant, appealed their bypasses.

The appellant argues that he has presented enough evidence to not only present *prima facie* cases of retaliation and racial discrimination, but that Essex County's rationale for his bypass was pretextual. He contends that based on his education, experience and rank on the eligible list, Essex County will not be able to demonstrate a more qualified candidate than him. Further, as there are material facts in dispute, he argues that this can only be addressed by a hearing.

The appellant reiterates his claims as evidence that his discipline for the September 7, 2019 incident was pretextual and notes that the matter has not yet been adjudicated at the OAL. He acknowledges that an appointing authority may consider pending discipline when deciding whether to bypass a candidate, but he asserts that this is only valid where the reasoning is lawful. The appellant argues that he has provided proof that County Counsel intended to impose a 30-day discipline regardless of the Hearing Officer's findings and that the discipline was excessive per his Union President's statements. Thus, he argues that Essex County's action were retaliatory and its decision to bypass him was unlawful. Further, he asserts that since seven officers were recommended to be charged regarding the most recent incidents, but he was the only one charged, this is enough to show that the prosecution of these charges was pretextual. Additionally, the appellant presents the timing of the charges of the second charges, the stripping of his duty weapon and restricting his on-and-off duty work privileges without ant policy mandating such action, and Essex County's history of bypassing minority candidates, especially African-American males, as additional evidence that its actions were pretextual.

In further response, Essex County notes that the appellant admits that an appointing authority may consider pending discipline when considering whether to bypass a candidate as long as the discipline is absent any unlawful motive. It highlights that the appellant was charged and found guilty of insubordination within 12 months of the promotional cycle. Essex County states that the appellant claims that because he was charged one day after his first interview, this proves that the charges are retaliatory. However, it presents that even if the appellant was not charged until "some thirty-five (35) days after the fact," it was still well within the time permissible under *N.J.S.A. 30:8-18.2*, which provides for charging discipline for a County Correctional Police Officer up to 45 days from when the person filing the complaint had obtained sufficient information to file the complaint. Additionally, although the appellant argues that the charges and 30-day suspension were retaliatory, a third-party Hearing Officer heard his explanations for the September 7, 2019 incident and found that the appellant committed insubordination. Specifically, the Hearing Officer found that "[the appellant's] claims that his medical

condition precluded him from completing the report are unavailing” and “any medical condition [the appellant] was suffering does not excuse outright the defiance demonstrated towards the order to prepare the report.” As such, Essex County asserts that the third-party Hearing Officer’s determination shows that the discipline was lawful. Concerning the appellant’s statements that Essex County planned to impose a 30-day suspension regardless of the Hearing Officer’s decision, it notes that this statement is inadmissible under the rules of evidence as it was part of settlement negotiations. It reiterates that since the Hearing Officer found that the appellant committed insubordination and upheld the 30-day suspension, the appellant’s argument that the 30-day discipline was retaliatory is without merit. Additionally, although the appellant’s Union President states that a 30-day penalty is excessive and unusual for a single act of insubordination, the Union President fails to consider that the PNDA indicated that the appellant had four prior sustained prior insubordination charges. Essex County also provides that it is not unusual for an employee to receive a 30-day suspension for insubordination as two officers within the past two years had received such a suspension.

Essex County reiterates that it chose not to promote the appellant because he currently has three pending disciplinary charges from the PNDA dated August 5, 2020, and it can consider pending discipline when considering whether to bypass a candidate as long as that discipline is absent any unlawful notice. Regarding the appellant’s claim that since he was charged one day after his second interview for a position as Lieutenant as evidence of retaliation, it notes that the matter was only returned by the Prosecutor’s Office on July 23, 2020. As such, the charges were served within a mere 16 days later, which was well within the permissible time under *N.J.S.A. 30:8-18.2* and does not make the charges unlawful. In reference to the appellant’s statement that there was no “formal” investigation of the alleged incidents, a Captain was tasked with investigating these incidents and sent three reports to the former Warden. It notes that the appellant does not explain what a “formal investigation” is or why the Captain’s investigations are not valid. From the Captain’s investigation, a plethora of charges were recommended against the appellant. While the appellant may disagree with the charges, and will have an opportunity to dispute them throughout the disciplinary process, disagreement does not make the charges inherently unlawful and it was within Essex County’s authority to consider lawful pending disciplinary charges when it chose to bypass him.

Referring to the appellant’s argument that his past discipline is pretextual for the subject bypass, he provides three examples of individuals who were promoted soon after their disciplines. However, Essex County presents that the appellant is incorrect, as one was promoted 17 months after his discipline. Further, although the other two were promoted within 12 months of discipline, it states that those promotions occurred without the participation of the Wardens involved in the appellants promotion as the Wardens did not start until April 2019, and the first promotional cycle that the Wardens participated in began with promotions in October 2019. Essex County presents that the appellant has not cited any promotions

handled by the Warden involved in this promotion where an employee with pending discipline or discipline within the past 12 months was promoted. Therefore, it argues that it is clear the Essex County's current policy is to consider disciplines within the past 12 months during the promotional cycle and the appellant failed to prove that the proffered reason for skipping him was pretextual.

Finally, Essex County presents that the appellant alleges that the reason for its bypass was pretextual because it engages in racial discrimination in the promotional process. However, it presents that on August 13, 2020 a Caucasian male and an African-American female were promoted to Captain. On August 13, 2020, a Hispanic male, an African-American male and an African-American female were promoted to Lieutenant. Further, on August 13, 2020, a Caucasian male, an African-American female, a Hispanic male, and an African-American male were promoted to Sergeant. Additionally, Essex County presents that the appellant contends that three African-American Sergeants were bypassed due to racial discrimination. However, it states that one of the Sergeants was not promoted because he did not meet the Civil Service job specification because he did not possess a valid driver's license as it was suspended for 10 years. Further, another Sergeant was bypassed due to a pending discipline as he was charged with neglect of duty after he left a weapon, his identification and badge in Walmart. Therefore, Essex County asserts that the appellant's accusations of pretext and racial discrimination are not true. It indicates that the appellant has the burden of proving unlawful, arbitrary or capricious action under Civil Service law and rules and it contends that he failed to do so.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(d) provides that except where a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record.

*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.

*N.J.A.C.* 4A:2-5.1(a) provides that an appointing authority shall not take or threaten to take any reprisal action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority.

In general, to present a *prima facie* case of reprisal, an appellant must satisfy the “Wright Line” test articulated by the New Jersey Supreme Court in *Matter of Bridgewater Tp.*, 95 N.J. 235 (1984), which states that an appellant has the burden of showing that he was engaged in a protected activity, that the employer knew of the activity and was hostile to it and that such activity or disclosure of information was a substantial motivating factor in the appointing authority’s action against the employee. Only after such a showing by an appellant does the appointing authority bear the burden of showing that the action taken was not retaliatory. *See also*, *Wright Line*, 251 NLRB 1083 (1980); *Mount Healthy City School District Bd. of Educ. v. Doyle*, 429 U.S. 279 (1977); *In the Matter of Jadwiga Warwas* (MSB, decided February 27, 2008).

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 action 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 and/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 motive.

Initially, the appellant requests a hearing in this matter. List bypass appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. For the reasons set forth below, no material issues of disputed fact have been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978).

In the instant matter, it was within the appointing authority’s discretion to select any of the top three interested eligibles for each appointment. Therefore, the first ranked candidate who was appointed, the appellant, the second ranked candidate who was bypassed, the third-ranked candidate who was appointed, the sixth ranked candidate who was bypassed, and the seventh ranked candidate who

was appointed, were reachable for appointment.<sup>5</sup> Nevertheless, the appellant alleges that based on his experience, education, and other training, he was the most qualified candidate and claims that he was first disciplined with a 30-day suspension for insubordination and then bypassed due to retaliation for his exposure of an alleged extramarital affair between a Lieutenant and an Assistant County Counsel, which he argued was a matter of public concern to qualify as protected activity, and because he is an African-American male. The appellant asserts that Essex County's stated reasons for the bypass are pretextual.

Referring to his insubordination charge, the appellant alleges that he was only charged with this offense after he exposed that the charging Lieutenant was involved in an extramarital affair with the representing Assistant County Counsel who prosecuted the matter at the local level. He questions the timing of his charges, the alleged statements by the then Warden during his interview, that he was not feeling well at the time he was asked to write the report and that he was sent to the emergency room by the department's doctor, and that departmental policy allows an ill officer to complete a report during their next tour of duty as evidence that the charges were unwarranted and in retaliation. Additionally, he presents statements from his Union President that an insubordination charge is typically a minor discipline, and therefore, he asserts that the "excessive" punishment is further evidence of retaliation and discrimination.

Initially, it is noted that the appellant has not provided any documentation or any other evidence that the alleged extramarital affair violated any law or departmental rule or that the exposure of that allegation was necessary. Therefore, the record is unclear as to why the appellant's exposure of an alleged extramarital affair is considered a "matter of public concern to qualify as protected activity." Regardless, even if the alleged action taken by Essex County met the definition of governmental mismanagement or abuse of authority, as the record indicates that a third-party Hearing Officer found that the charges were sustained, there is no evidence in the record that the insubordination charges were issued in reprisal. Further, for the same reason, the record indicates that the appellant's bypass, based on the insubordination charge which led to a sustained major discipline, a 30-day suspension<sup>6</sup> within the past 12 months of the appointing authority's decision to

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<sup>5</sup> As the fourth and fifth positioned candidates were removed, under the "Rule of Three," the first, second and third positioned candidates were reachable for the first appointment, the second, third and sixth ranked candidates were reachable for the second appointment, and the second, sixth, and seventh ranked candidates were reachable for the third appointment.

<sup>6</sup> The appellant submitted a statement from his Union President regarding the negotiations of the insubordination charge as evidence that the penalty was excessive. However, negotiations are inadmissible evidence, and as the Hearing Officer found that the charges were sustained and the 30-day suspension was appropriate, the record indicates that the charges and penalty were imposed with lawful purpose. It is noted that the Commission has upheld the **removal** of candidates from promotional lists where there is a major discipline in their recent work history. Moreover, the Commission notes that, even if the penalty was, as apparently discussed during the settlement



bypass him on the subject certification, as well as three additional current pending disciplines at the departmental level, was based on lawful purposes. *See In the Matter of Michael Cervino* (MSB, decided June 9, 2004).

Concerning the appellant's argument that Essex County will not be able to find a more qualified candidate based on his experience and education, even if it is true that the appellant was more "qualified"<sup>7</sup> than the appointed candidates, this argument is not relevant as he was not bypassed from the list for being less qualified. Instead, Essex County indicated that due to his recent and pending disciplines, his actions indicated his inability to lead others by example at this time, which is permissible under *Cervino, supra*. Referring to the appellant's argument that the insubordination discipline was unwarranted because he was ill, and a 30-day suspension was excessive based on one insubordination charge, the Hearing Officer reviewed the appellant's arguments regarding his illness and found it unpersuasive and sustained the 30-day suspension, as he had four prior disciplines for insubordination. Moreover, the Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. In this regard, his appeal of that action is pending at OAL. Regardless, there is no evidence in the record that the charges, the imposed penalty and the bypass due to the discipline were made for unlawful purposes.

Regarding the appellant's current pending discipline that is still at the departmental level, the appellant presents that although seven officers were recommended to receive discipline he was the only one charged. He also questions the timing of the charges, that the County Prosecutor indicated that there was insufficient evidence to support criminal charges, that the matters were never "formally" investigated by the department, that the circumstances of the incidents justify his actions, and that he was stripped of his service weapon and privilege to work off-duty. However, the record indicates that charges were only issued after the matter was returned by the Prosecutor, that the Prosecutor only indicated that there was insufficient evidence for criminal charges and not that administrative charges should not be pursued, that a Captain was tasked with investigating the matter and issued reports to the former Warden recommending discipline, and the charges were issued in a timely fashion. Moreover, even without considering the current pending discipline, Essex County could have bypassed him solely based on the insubordination charge, which was sustained by the Hearing Officer.

Referring to the appellant's statement that there is no departmental policy that prevents an employee from being promoted when there has been discipline

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negotiations, a five working day suspension, such a suspension could be utilized as a valid basis for a bypass on a promotional list.

<sup>7</sup> There is no evidence in the record concerning the other candidates' qualifications.

within the past 12 months or pending discipline, Essex County notes that one of his examples of an officer being promoted with recent discipline was incorrect as that officer's discipline was 17 months prior to his promotion. Further, concerning other examples that the appellant presents regarding officers with recent discipline that were promoted, Essex County notes that those prior promotions were before the Wardens involved in the appellant's bypass started with the County, and these Wardens have not promoted anyone with discipline within the past 12 months of the decisions for promotions. Therefore, the record indicates that the decision to bypass the appellant based on his recent and current pending discipline was based on current department policy and not pretext for an unlawful reason.

Concerning the appellant's arguments that minorities are more likely to be bypassed within the department, Essex County presented that on August 13, 2020, it promoted two Caucasian males, three African-American females, two Hispanic males, and two African-American males to Captain, Lieutenant or Sergeant. Additionally, regarding the three African-American Sergeants who were bypassed, Essex County presented that one did not meet the Civil Service job specification because he did not have a valid driver's license as his license was suspended for 10 years and one had a pending discipline. Therefore, the record does not indicate that minority candidates, and/or African-American male candidates, were more likely to be bypassed based on the candidates' race.

As such, contrary to the appellant's assertions, the record does not indicate that Essex County appointed and bypassed candidates based on race. Accordingly, the appellant did not establish a *prima facie* case of reprisal or racial discrimination as he did not present any substantive evidence regarding the bypass that would lead the Commission to conclude that the bypass was improper or an abuse of Essex County's discretion. See *In the Matter of Chirag Patel* (CSC, decided June 7, 2017). Similarly, as a recent lawful discipline is permitted as a basis for a bypass, and there is no evidence that that disciplinary action is being pursued for an unlawful purpose, it was properly considered as part of Essex County's decision to bypass the appellant.

As indicated previously, the appellant's insubordination charge is currently at the OAL and the current discipline charges are still pending at the departmental level. If all charges are dismissed or the penalties are modified to no greater than a disciplinary action of less than a suspension,<sup>8</sup> the appellant can petition the Commission for reconsideration of this matter, as such circumstance *may* provide evidence that his bypass was not for legitimate business reasons.

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<sup>8</sup> For example, an official written reprimand.

**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 17<sup>TH</sup> DAY OF FEBRUARY, 2021

*Deirdre' L. Webster Cobb*

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