



STATE OF NEW JERSEY

In the Matter of Eddie Blount, County :
Correctional Police :
Lieutenant (PC2070U), Essex County :

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

CSC Docket No. 2021-469

List Bypass Appeal

ISSUED: MARCH 26, 2021 (SLK)

Eddie Blount, represented by Catherine M. Elston, 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, 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 July 8, 2020 (PL200635) for a position in the subject title. The first ranked candidate was appointed, the second ranked candidate was bypassed, the third-ranked candidate was appointed, the fourth and fifth ranked candidates were removed, the appellant, the sixth ranked candidate, was bypassed, and the seventh ranked candidate was appointed.

A review of the record indicates that on May 19, 2020, the appellant left his fanny pack in a shopping cart at a Walmart which contained his off-duty weapon, badge, county identification and driver's license. Further, this was the third incident where the appellant misplaced his badge as he had such incidents in 2014 and 2018. Thereafter, on May 29, 2020, the appellant was issued a Preliminary Notice of Disciplinary Action (PNDA) which recommended that he be suspended for 120 working days for violating various administrative and departmental rules. Additionally, the appellant's disciplinary history includes an unauthorized area charge in 2013 which led to counseling, one attendance counseling charge in 2015 and two in 2016 which led to counseling, and a parking charge which led to counseling.

Although the PNDA indicates that a departmental hearing was scheduled for June 26, 2020 for the current incident, the record indicates that the disposition of this matter is pending.¹

On appeal, the appellant states that his bypass was imposed as part of a disciplinary penalty where the departmental hearing recently concluded. He indicates that that an Internal Affairs Officer testified that the appointing authority's Department of Corrections adopts the Attorney General Guidelines on Internal Affairs. The appellant presents that the guidelines state that the loss of a promotional opportunity is a form of discipline. He notes that the subject promotional bypass was not included in the PNDA even though the May 2019 incident was the underlying basis for both the bypass and disciplinary charges. The appellant asserts that the appointing authority imposed the disciplinary promotional bypass separately, and in advance of the hearing on the charges, which essentially bifurcated the disciplinary penalty into two different Civil Service schemes under Major Discipline and Examination and Selection Appeals regulations. He states that this forced him to file a bypass appeal although the bypass was a disciplinary penalty. Therefore, the appellant argues that he is entitled to appeal his discipline to the Commission and have the matter transmitted to the Office of Administrative Law (OAL) as a contested case. He states that the appointing authority's manipulation of Civil Service rules and law deprived him of an independent hearing where he can confront his accusers, call and cross-examine witnesses. The appellant asserts that there is no legal authority to bifurcate the disciplinary penalty. He states that the evidence presented at the departmental hearing established that the penalty that the appointing authority is seeking is inconsistent with that given to other officers in similar circumstances. The appellant presents *In re Stallworth*, 208 N.J. 182 (2011) where the court held that there must be fairness and generally proportionate discipline imposed for similar offenses by public employers. Further, the Commission is "charged with responsibility for creating a disciplinary system of fair and consistent application to protect civil service employees at the State and local level." See *Hennessey v. Winslow Twp.*, 183 N.J. 593, 604 (2005). He requests that his disciplinary promotional bypass appeal be held in abeyance pending issuance of the Final Notice of Disciplinary Action (FNDA), which should be amended to include the disciplinary promotional bypass, to provide him appeal rights to the disciplinary promotional bypass. In the alternative, if the Commission denies this request, the appellant requests 30 days to supplement this appeal.

In response, the appointing authority, represented by Jill Caffrey, Assistant County Counsel, presents that the appointing authority found that there were other eligibles better suited for the position of Lieutenant as the appellant had a pending discipline. Specifically, the Warden found it appropriate that the appellant be charged with neglect of duty after he left his weapon, identification and badge at a

¹ The appellant submits transcripts that indicates that there was testimony for the departmental hearing on September 21, 2020 and October 14, 2020.

Walmart. Therefore, the Warden indicated that since there was pending discipline, the appellant would not be currently promoted, but would be considered in the future. It notes that the appellant is facing a potential lengthy suspension and asserts that it was well within its authority to bypass the appellant under Civil Service law and rules.

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.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. *N.J.A.C.* 4A:2-3.1(a) provides that minor discipline is a formal written reprimand or a suspension or fine working days or less.

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). No material issue of disputed fact has 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 second ranked candidate who was bypassed, the third-ranked candidate who was appointed, the appellant, the sixth ranked candidate who was bypassed, and the seventh ranked candidate who was appointed, were reachable for appointment.² Nevertheless, the appellant argues that under the Attorney General Guidelines, which the appointing authority's Department of Corrections' Internal Affairs follows, the loss of a promotional opportunity can be a form of discipline. Therefore, the appellant argues that the appellant is being disciplined twice for the same incident, in violation of Civil Service law and rules and that instead, the FNDA for the May 2019 incident should be amended to include the subject bypass as being part of the penalty for this incident.

² 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.

Thereafter, he intends to appeal it to the Commission and have the matter transmitted to the OAL, where he can argue that the penalty imposed was arbitrary and disproportionate compared to others who engaged in similar conduct.

Initially, it is noted that the Commission, and **not** the Attorney General's Office which defines what is discipline under Civil Service law and rules. Under *N.J.A.C. 4A:2-2.2(a)* and *N.J.A.C. 4A:2-3.1(a)*, a loss of a promotional opportunity is not considered any form of discipline. The appellant has provided no statute, regulation, case law or other authority that demonstrates that the Commission is bound by the cited Attorney General Guidelines³ and absent any unlawful motive, it is permissible for an appointing authority to consider an individual's pending discipline as a basis for bypassing him on a certification. See *In the Matter of Michael Cervino* (MSB, decided June 9, 2004).

In this matter, a review of the record indicates that on May 19, 2020, the appellant left his fanny pack in a shopping cart at a Walmart which contained his off-duty weapon, badge, county identification and driver's license. This incident has spawned a pending disciplinary action. Further, this was the third incident where the appellant misplaced his badge as he had such incidents in 2014 and 2018. As the subject bypass is not considered discipline under Civil Service law and rules, there was no reason for the appointing authority to have included it in either the PNDA or FNDA for the subject incident. Moreover, as there is no dispute in the record that the incident occurred,⁴ even if the appellant's penalty is reduced or even eliminated, the record indicates that there was no unlawful motive in the appointing authority considering the pending discipline as a legitimate basis to exercise its discretion to bypass him on the list.

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.

³ The cases that the appellant cites do not address the question as to whether the loss of a promotional opportunity due to a bypass because of pending discipline is considered discipline.

⁴ There is a May 20, 2020 statement from the appellant where he acknowledges, when referring to his gun, badge and identification, that he left his "pack with of its personal contents in the basket area and exited the store." Further, on appeal, the appellant is not arguing that he did not leave these items at Walmart and is simply arguing that the penalty is disproportionate.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF MARCH, 2021

Deirdre' L. Webster Cobb

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