



STATE OF NEW JERSEY

In the Matter of Quang Tran, Human Services Specialist 3 (PC0204A), Camden County Board of Social Services	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
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CSC Docket No. 2022-763	:	List Bypass Appeal
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ISSUED: JANUARY 21, 2022 (SLK)

Quang Tran appeals the bypass of his name on the Human Services Specialist 3 (PC0204A), Camden County Board of Social Services eligible list.

By way of background, the appellant, a nonveteran, appeared on the PC0204A eligible list, which promulgated on August 8, 2019 and expires on August 7, 2022. The appellant’s name was certified on July 14, 2021 (PL210709) for a position in the subject title. The first six positioned candidates on the certification were appointed, the appellant, the seventh positioned candidate was bypassed in favor of the eighth positioned candidate, who was appointed.

On appeal, the appellant presents that he has 11 years of experience with the appointing authority, an excellent attendance record, and a commendable work ethic. He states that the appointing authority uses a “generic” operative model for most positions within the department and specialized qualifications are not typically the benchmark for a promotion. The appellant indicates that generic categorization allows for upward mobility with the opportunity to advance skill sets in an environment of continuous learning. He requests written documentation of the reason he was bypassed.

In response, the appointing authority indicates that there were seven openings for the subject title which were spread throughout multiple departments and notes that the interview/selection process involved several different department heads. It states that the departments that consist of generic workers filled its positions first with candidates that ranked higher than the appellant. The appointing authority states that the last department to fill its position was the Child Support department.

It asserts that this department is unique and uses separate computer systems and has its own training institute which requires multiple mandated trainings. While the appointing authority indicates that the appellant and the lower ranked candidate were both considered for a position in the Child Support department, it appointed the lower ranked candidate because she was the most familiar with the Child Support department as she had already been fully trained within the department and its computer systems.

In response, while the appellant acknowledges that it was reasonable for the higher ranked candidates to be appointed, he does not agree with being the only candidate who was bypassed during the selection process despite having worked more years at the appointing authority than other candidates positioned both below and above him on the subject certification. He states that one could argue that each department is unique and not just the Child Support department. The appellant asserts that there is a different department that is noted for being one of the more challenging departments, where those selected for that department had no prior experience. He questions how the other positions were chosen by rank, but only the Child Support department required previous experience. The appellant indicates that there is precedent to hire people in the Child Support department who had no prior experience in that department. He states that during the Child Support department interview, he inquired as to who would likely get the position and the Child Support Administrator advised that it would likely be one of the top two candidates. The appellant asserts that he was under the impression that the selection process would go by rank, but everyone ranked above him was selected to other departments and the Child Support position was given to a lower ranked candidate. Therefore, the appellant states that being in one department should not hinder or lower a person's chance of getting a position in another department.

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 or promotional 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.

Regarding the merits, 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.

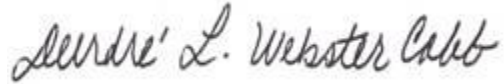
In the instant matter, it was within the appointing authority's discretion to select any of the top three interested eligibles for each appointment. Nevertheless, the appellant alleges that the appointing authority had some type of inappropriate or unfair reason for bypassing him as, despite his experience, he was the only candidate who was bypassed on the subject certification and the position for which he was bypassed for in the Child Support department was the only position where experience in that department was factored in the decision even though other departments also have specialized needs. However, while the appellant believes that he deserves to be appointed, consistent with *N.J.A.C. 4A:4-4.8(a)3*, the appointing authority had selection discretion under the "Rule of Three" to appoint a lower ranked eligible absent any unlawful motive. *See In the Matter of Michael Cervino* (MSB, decided June 9, 2004). In this case, the appointing authority presents lawful reasons for the appellant's bypass. Specifically, it presents that the appellant was bypassed due to the Child Support department's unique needs, including using separate computer systems and having its own training institute which requires multiple mandated trainings and the lower ranked appointed candidate already was trained in that department. Additionally, there is no requirement under Civil Service laws or rules which prohibits the appointing authority from selecting some candidates based on his or her rank and other candidates based on specific experience to fill a department's needs so long as it does not violate the "Rule of Three." Further, even if the appointing authority previously filled positions in the Child Support department without requiring experience in that department, this does not prohibit the appointing authority from making its selection for this position based on experience in the department. Moreover, the appellant has not provided any evidence that the appointing authority's bypass was not based on legitimate business reasons. Accordingly, the appellant failed to meet his burden of proof.

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 19TH DAY OF JANUARY, 2022



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