



STATE OF NEW JERSEY

In the Matter of Dorit Peer, Police
Officer (S9999A), Morristown

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

CSC Docket No. 2022-1869

Bypass Appeal

ISSUED: August 24, 2022 (HS)

Dorit Peer appeals the bypass of her name on the Police Officer (S9999A), Morristown eligible list.

The appellant appeared as a non-veteran eligible on the subject eligible list, which promulgated on May 15, 2020 and expires on May 14, 2023. A certification, consisting of the names of 10 eligibles—one disabled veteran and nine non-veterans—was issued on July 23, 2021 (OL210631) with the appellant listed in the third position. In disposing of the certification, Morristown bypassed the appellant; appointed N.H. and S.G., the ninth and 10th listed eligibles respectively, effective January 10, 2022; and removed the remaining eligibles.

On appeal to the Civil Service Commission (Commission), the appellant questions how Morristown could blatantly bypass a viable, qualified candidate. She requests an explanation of the bypass decision.

In response, Morristown, represented by Jared Monaco, Esq., presents the certified statement of Darnell Richardson, Police Chief. Richardson states that the appellant was bypassed for the following reasons:

- The other candidates performed better during the give-and-take of the interviews, as it was difficult to establish a rapport with the appellant. For example, in answering the initial question (“tell us about yourself”), the hiring panel felt that the appellant was vague,

providing very little information regarding her background. The other candidates were more outgoing and engaging and excelled in the interview.

- The panel felt that the appellant was unprepared for the interview, while the other candidates' exceptional preparation was evident based on their responses.
- The appellant was not the best fit for Morristown's community policing model as her knowledge of the Town was limited. The selected candidates provided a vast knowledge of the Town.
- The appellant's employment history was problematic as it appeared she did not hold a position for very long, which concerned Morristown with regard to her commitment to the profession. The Town felt that the appellant could easily find herself not liking the career and resigning if she were to find herself struggling with the profession.
- The appellant's driving history was questionable, which would not bode well for a position where the officer must be in a vehicle 10.75 hours per day.

In reply, the appellant responds to the above reasons as follows:

- When she was asked to tell the panel about herself, Richardson interrupted her as she began to explain her background and her father. Richardson stated, "Enough about your father. I asked you to tell us about yourself." Her background includes her parents and her father's service career in the Israeli Air Force, which was very inspirational in her passion for law enforcement here in the United States. The appellant was not able to establish that during her answer. Her answer was not vague. Rather, it was interrupted.
- The appellant spent many weeks researching the Town, prepping for interview questions, and ensuring she presented with the appropriate "demeanor."
- The appellant has lived in Morristown for five years and, in fact, chose to remain in Morristown in order to be an eligible candidate for the town in which she lived. She is "aware" of all the neighborhoods and communities that make up Morristown. It is also very vague to say she is "not a fit for the community policing model and how a knowledge of the town made other candidates a better fit."
- The appellant has "had jobs in different industries as [her] journey through life was non-traditional," which she was not able to explain after being cut off during her answer to "tell us about yourself." However, she has always had a passion for law enforcement and would not find herself disliking her career as a Police Officer. In fact, it was her ability to excel in those positions in different fields with

diverse groups of people that solidified her feelings to seek a career in law enforcement.

- Morristown's response regarding her driving history was very vague and made no mention as to what was problematic about it. The appellant has not had a ticket or an accident in the past five years.

The appellant adds that conditional offers were made to three candidates, the fifth, ninth, and 10th listed eligibles. The appellant states that after the fifth listed eligible failed the psychological examination, Richardson requested that a new certification be issued.¹ The appellant states that she is unsure as to why she was not given a conditional offer at that point and suggests the failure to do so was a "Rule of Three" violation. She notes that she is the only candidate who was not disqualified from the July 23, 2021 certification (OL210631), and she is the first listed eligible on the new certification.

In reply, Morristown counters that Richardson was simply attempting to extract any relevant information from the appellant, which was difficult to do. It submits that the appellant was not interrupted but rather made it so difficult to establish the give-and-take required during an interview that Richardson had to repeatedly ask questions to extract answers. Morristown argues that the appellant's reply shows that while she may be able to provide slightly more detailed responses at this time, she did a poor job communicating her experiences, background, and desire to be a law enforcement officer to the hiring panel. Concerning the appellant's driving record, Morristown argues that the appellant has failed to reflect on her driving record *prior* to the past five years. According to Morristown, the appellant had multiple accidents that were a result of falling asleep at the wheel and received multiple summonses for unsafe operation and careless driving. Additionally, Morristown insists that it followed the "Rule of Three," notwithstanding that the fifth listed eligible failed the psychological examination and was removed.

In reply, the appellant argues that her objective during the interview was to give a personal history of her life, her family background, her culture, where she is from, how she was raised, and what her goals are, which is clearly the intention of any qualified candidate when asked the question "tell us about yourself." To say that it was difficult to extract information is simply "nitpicking" or searching for any petty way to try to disqualify her for a job that she is perfectly capable and willing to do. The appellant insists that she can communicate well, unless she is being interrupted. She proffers that Richardson did not care about hearing about her background and simply did not like her responses. The real difficulty, according to the appellant was trying to get her answers out without "hostile interruption." With respect to her driving history, the appellant acknowledges that the first few years of her driving history were "not perfect," and she has had "accidents" in the past. However, she

¹ Certification OL220108 issued to Morristown on January 27, 2022 and has not yet been returned.

maintains that, contrary to Morristown's assertion, only *one* accident was a result of falling asleep behind the wheel after working very long hours at work.

The appellant states her belief that the points brought up by Morristown as to why she is not a good fit for the position are simply due to the personal reasons Richardson has about her due to the first impression. But, the appellant opines, one does not get to hire someone because one likes them and they are unqualified, and one does not get to dismiss someone because one does not like them and they are qualified. Morristown, in the appellant's view, provided no real enlightenment as to why she was bypassed.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-6 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 that no veterans are on 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).

Since the disabled veteran was removed from the certification, it was within Morristown's discretion to select any of the top three interested eligibles on the certification for each vacancy. An appointing authority has the discretion to dispose of a certification within the guidelines of Title 11A of the New Jersey Statutes Annotated and Title 4A of the New Jersey Administrative Code. This discretion includes utilizing each candidate's history and qualifications to determine the best candidate from a list of three eligibles, any of whom may be selected under *N.J.A.C.* 4A:4-4.8(a)3. It is also within an appointing authority's discretion to interview candidates and base its hiring decisions on the interview. *See e.g., In the Matter of Angel Jimenez* (CSC, decided April 29, 2009); *In the Matter of Abbas J. Bashiti* (CSC, decided September 24, 2008); *In the Matter of Paul H. Conover* (MSB, decided February 25, 2004); *In the Matter of Janet Potocki* (MSB, decided January 28, 2004). So long as the hiring decision complies with *N.J.A.C.* 4A:4-4.8(a)3, the Commission cannot find that the interview was conducted inappropriately. Morristown justifies its decision to bypass the appellant based on her interview performance, her employment history, and her driving history. As discussed below, each reason was legitimate.

With respect to the appellant's interview performance, Morristown advises that it was difficult to establish a rapport with the appellant during the give-and-take of the interview. As an example, it offers the appellant's response to the initial question, "tell us about yourself." The hiring panel felt that the appellant was vague and provided very little information regarding her background. Richardson had to repeatedly ask questions to extract relevant information. The appellant counters that she was interrupted while attempting to explain her background and her father and that Richardson simply did not like her responses. At heart, this is merely a

disagreement over what information adequately “[told Morristown] about [the appellant.” The Commission will not disturb Morristown’s assessment in that regard unless the record suggests an illegitimate motive on Morristown’s part. However, mere disagreement between an appointing authority and a candidate over whether an answer is responsive to the question posed, without more, is insufficient to establish an illegitimate motive. Morristown also pointed to the appellant’s lack of preparation for the interview and her comparatively limited knowledge of the municipality. To these points, the appellant merely counters that she spent many weeks researching Morristown, prepping for interview questions, and ensuring she presented with the appropriate “demeanor.” The appellant also merely counters that she has lived in Morristown for five years; chose to remain in Morristown in order to be an eligible candidate for the municipality in which she lived; and is “aware” of all the neighborhoods and communities that make up Morristown. The appellant’s counterarguments in these respects do not substantively refute Morristown’s assessment that she was unprepared and displayed a comparatively limited knowledge of the municipality. The appellant’s statement that she spent time researching, prepping, and ensuring she presented with the correct “demeanor” does not call into question Morristown’s assessment that the appellant was unprepared at the time of the actual interview itself. Similarly, the appellant’s mere indication that she has lived in Morristown for five years and is “aware” of all its neighborhoods and communities does not necessarily mean that she displayed the level of knowledge Morristown expected of one who would police the jurisdiction, especially if it is employing a community policing model.

Regarding the appellant’s employment history, Morristown was apparently concerned that the appellant did not hold a position for very long. The appellant does not directly contradict the factual underpinning for that assessment as she acknowledges that she has “had jobs in different industries as [her] journey through life was non-traditional.” That Morristown flagged this issue as implicating the appellant’s potential future commitment to the police profession and relied on it as part of its bypass decision was not an abuse of its discretion.

Concerning the appellant’s driving history, Morristown represents that the appellant, prior to the past five years, had multiple accidents that were a result of falling asleep at the wheel and received multiple summonses for unsafe operation and careless driving. The appellant counters that only one accident was a result of falling asleep behind the wheel. However, she does not otherwise dispute her driving record, acknowledging that the first few years of her driving history were “not perfect.” Thus, even if Morristown has indeed misstated the number of accidents that were the result of falling asleep at the wheel, this does not render its reliance on the totality of the appellant’s driving record inappropriate since motor vehicle infractions may reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3

(App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

Additionally, the appellant proffers that the “Rule of Three” was violated when the fifth listed eligible failed the psychological examination and she was not then conditionally offered a position. The Commission disagrees. When the fifth listed eligible failed the psychological examination, Morristown requested that eligible’s removal from the eligible list as is permitted. See *N.J.A.C.* 4A:4-4.7(a)1 and *N.J.A.C.* 4A:4-6.1(a)3 (eligible who is psychologically unfit to perform effectively the duties of the title may be removed from list). Assuming there are no veterans, the “Rule of Three” calls for the appointing authority to select any of the top three *interested* eligibles on an open competitive list. See *N.J.A.C.* 4A:4-4.8(a)3i. However, a *removed* eligible is not considered an interested eligible. Thus, so long as Morristown had legitimate reasons to bypass the appellant, though she was interested, it was not obligated to extend her a conditional offer when the fifth listed eligible failed the psychological examination. The “Rule of Three” was not violated because Morristown selected one of the top three *interested* eligibles for each vacancy and had legitimate reasons to bypass the appellant.

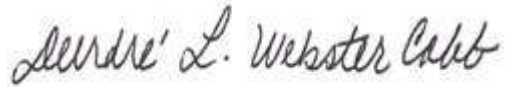
It must be noted that Morristown had selection discretion under the “Rule of Three” to appoint a lower-ranked eligible absent any unlawful motive. See *N.J.A.C.* 4A:4-4.8(a)3; *In the Matter of Nicholas R. Foglio, Fire Fighter (M2246D), Ocean City*, 207 N.J. 38, 49 (2011). Compare, *In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984) (Hearing granted for individual who alleged that bypass was due to anti-union animus); *Kiss v. Department of Community Affairs*, 171 N.J. Super. 193 (App. Div. 1979) (Individual who alleged that bypass was due to sex discrimination afforded a hearing). Moreover, the appellant does not possess a vested property interest in the position. In this regard, the only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). The appellant has not presented any substantive evidence regarding her bypass that would lead the Commission to conclude that the bypass was improper or an abuse of Morristown’s discretion under the “Rule of Three.” Moreover, Morristown presented legitimate reasons for the appellant’s bypass that have not been persuasively refuted. Accordingly, a review of the record indicates that Morristown’s bypass of the appellant’s name was proper, and the appellant has not met her burden of proof in this matter.

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 24TH DAY OF AUGUST, 2022



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