



STATE OF NEW JERSEY

In the Matter of Uday Hiremath,  
Software Development Specialist 3  
(PS5440U), Office of Information  
Technology

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-60

Reconsideration

ISSUED: August 24, 2022 (SLK)

Uday Hiremath, represented by Dudley Burdge, Senior Staff Representative, Communications Workers of America, Local 1032, requests reconsideration of *In the Matter of Uday Hiremath* (CSC, decided May 18, 2022) where the Civil Service Commission (Commission) upheld the bypass of his name on the Software Development Specialist 3 (PS5440U), Office of Information Technology eligible list.

By way of background, the announcement for PS5440U indicated that in accordance with *In the Matter of Software Development Specialist 2 and Software Development Specialist 3, Office of Information Technology* (CSC, decided June 26, 2013), candidates who passed the examination would be selectively certified based on possession of the specific skillset(s) required for the position(s) to be filled as determined by the appointing authority. The appellant, a nonveteran, appeared on the PS5440U eligible list, which promulgated on June 23, 2020, and expires on July 22, 2023. A total of 15 names, including the appellant, were certified on September 3, 2020 (PS200543) for a position in the subject title. In response, the appellant indicated that he was interested in positions one, two, three, four and seven. The skillset needed for the position in question, position seven, was Natural (Structured Mode); IBM HATS (Host Access Transformation Services); ADABAS database; Job Control Language (JCL); TSO/ISPF or similar editing facility; EntireX; and IBM mainframe facilities utilities. The appointing authority returned the certification on November 30, 2020, indicating that it was requesting to appoint the two candidates who were tied for first ranked, to remove the third ranked candidate, to appoint the

fourth, fifth and sixth candidates who were tied for fourth ranked, to indicate that one of the seventh ranked candidates was interested in future certifications only, to bypass the other seventh ranked candidate, the appellant, for other reasons, to bypass the ninth ranked candidate for other reasons, to bypass the 10<sup>th</sup> ranked candidate, to bypass the 11<sup>th</sup> ranked candidate for other reasons, to appoint the 12<sup>th</sup> ranked candidate, to bypass the 13<sup>th</sup> and one of the 14<sup>th</sup> ranked candidates, and to appoint one of the 14<sup>th</sup> ranked candidates. It is noted that this agency has not yet recorded the certification.

Based on the delay in recording the disposition of the subject certification, the Commission agreed to review the appellant's bypass appeal, notwithstanding that the certification had not been recorded. In *In the Matter of Uday Hiremath* (CSC, decided May 18, 2022), the Commission denied the appellant's bypass appeal. The Commission also noted that the appellant had been promoted since the subject examination closing date and he is now in a title that has the same class code as the subject title. Therefore, the subject examination does not represent a promotion and he is no longer eligible for a promotion from the subject eligible list. Instead, if the appellant requests a position in the subject title, he would need to undergo lateral title change procedures under *N.J.A.C. 4A:4-7.6*.

On reconsideration, the appellant contends that the Rule of Three was not properly applied. He notes that the appointment was done through a certification and interviews in accordance with the Selective Certification pilot in place at the Office of Information Technology (OIT) for the Software Development Specialist and Network Administrator title series. The appellant presents that for the position in question, he was the highest-ranking person among four persons interviewed, and the lowest ranked person was appointed. He indicates that the appointing authority stated, and the Commission seemingly accepted, that one of the persons interviewed acknowledged that they did not possess the required skillset in the use of HATS.

The appellant asserts that the use of HATS is a minor component of the job skills for the position in question as its use is infrequent. He also believes that the statement concerning the unfamiliarity with HATS of the other candidate was not fully accurate. The appellant presents that the appointing authority also stated that he stated that he did not have extensive experience with HATS, which he vehemently disputes as he has extensive HATS experience, which he documented. Therefore, the appellant questions the appointing authority's reasons for bypassing this other candidate and himself.

The appellant states that as part of his appeal, he requested the records of the structured, documented interviews for the subject position, including the questions asked and the documented responses. He contends that these documents are directly relevant to the question as to whether at least two candidates were properly bypassed. The appellant indicates that he never received these documents which he asserts are essential for his appeal. He argues that the failure of the appointing

authority to provide this information prevented him from effectively demonstrating his burden of proof. The appellant provides that “in keeping with normal appeal procedures,” he should have received these documents. He also states that the appointing authority’s failure to return the certification for almost two years is questionable and improper, and indicates that this has made his appeal more difficult. The appellant requests the aforementioned documentation as well as other submissions from the appointing authority in this matter. He indicates that there were conversations between this agency and the union concerning the Selective Certification pilot at OIT, and it was acknowledged that the records of the structured, documented interviewed would be provided during appeals.

Although given the opportunity, the appointing authority did not respond to the appellant’s request for reconsideration. As such, it is relying on its submissions from the prior matter.

### CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) provides that a petition for reconsideration must show new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding.

*N.J.A.C.* 4A:4-4.7(b)1 provides that an appointing authority that requests removal of an eligible’s name from a list shall submit to an appropriate representative of the Commission, no later than the date for disposition of the certification, all documents and argument upon which it bases its request. Upon request of the eligible or upon the eligible’s appeal, the appointing authority shall provide the eligible with copies of all materials sent to the appropriate Commission representative.

*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.

Initially, it is noted, the appellant’s request is moot. As indicated in the prior decision, after the subject examination closing date, the appellant was promoted to Data Processing Systems Programmer 1, which has a 29 class code, which is the same class code as the title under test. Therefore, the subject title does not represent a promotion, but rather a lateral move, and he, therefore, is no longer eligible for a promotion to that title from the subject eligible list regardless of his belief about his qualifications. Rather, if the appellant desires to be appointed to a position in the subject title, he would be required to undergo lateral title change procedures. *See N.J.A.C.* 4A:4-7.6.

Concerning the merits, the appellant has failed to meet the standard for reconsideration. The appellant asserts that the use of HATS is a minor component of the job skills for the position in question as its use is infrequent. Additionally, he also vehemently disputes that he stated that he did not have extensive experience with HATS, as he contends that he documented his extensive experience. However, the appellant's argument is not material. Consistent with *N.J.A.C. 4A:4-4.8(a)3*, an appointing authority has 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). However, the appellant has not alleged that the appointing authority's decision to bypass him was based on an unlawful motivation. Allegations that the appointing authority over-emphasized the need for HATS experience for the subject position or underestimated his HATS skills in not an allegation of illegal or invidious motivation. Therefore, even if true, these allegations do not provide a basis to grant an appeal of the bypass of his name under the Rule of Three. It is also noted that the appellant's recent promotion to Data Processing Systems, Programmer 1, which has the same class code as the subject title, lends further evidence that the appointing authority is not acting in an invidious manner towards him.

The appellant also complains that he did not receive all documentation that he requested in this matter. However, in the prior matter, the appointing authority provided the reason for its bypass, which complies with *N.J.A.C. 4A:4-4.7(b)1*. There is no requirement under Civil Service law or rules for the appointing authority to provide all documentation related to the subject bypass or any other information regarding other bypasses by the appointing authority. *See In the Matter of Jose Badillo* (CSC, decided May 19, 2021). Regarding the appellant's claim that there are two bypasses that he questions, it is noted that the appellant does not have standing to challenge the bypass of another employee.

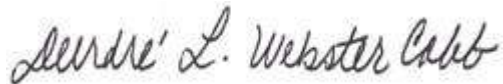
Concerning the appellant's belief that the appointing authority has acted improperly by failing to return the subject certification for two years, the record indicates that the subject certification was issued on September 3, 2020, and its disposition was initially due November 4, 2020. Thereafter, the certification's disposition due date was extended to December 3, 2020 and it was returned on November 30, 2020. Therefore, the appointing authority did not fail to return the certification for two years as the appellant alleges. Moreover, while it is unclear why the certification is still outstanding after nearly two years, as the Division of Agency Services has not requested enforcement, there is nothing in the record to suggest that the appointing authority has acted improperly.

**ORDER**

Therefore, it is ordered that this request 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 24<sup>TH</sup> DAY OF AUGUST, 2022



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