



STATE OF NEW JERSEY

In the Matter of P.S., Administrative
Analyst 3 (PS2510N), Department of
Labor and Workforce Development

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

CSC Docket No. 2023-199

Reconsideration

ISSUED: November 2, 2022 (SLK)

The Department of Labor and Workforce Development requests reconsideration of *In the Matter of P.S.* (CSC, decided June 15, 2022) where the Civil Service Commission (Commission) remanded the matter to the appointing authority to re-interview the candidates and redispense of the certification.

By way of background, P.S., a nonveteran, appeared on the PS2510N eligible list, which promulgated on July 1, 2021, and expires on June 30, 2024. A total of 10 names, including P.S., were certified on September 17, 2021, (PS211041) for a position in the subject title. The appointing authority returned the certification on February 7, 2022, indicating that P.S., the first ranked candidate, was bypassed, the second ranked candidate was appointed, the third ranked candidate was bypassed, the fourth, fifth, and sixth ranked candidates were appointed, the seventh ranked candidate was removed, the eighth and ninth ranked candidates were appointed, and the 10th ranked candidate was removed.

On appeal, P.S. argued that he was bypassed due to his disabilities. He also submitted a certification from the 10th ranked candidate, who stated that one of the panelists allegedly stated to her that the appointing authority had already made up its mind about who it was going to promote to the subject title and the interviews were only done because Human Resources required it. Additionally, P.S. indicated that other candidates had in-person interviews, while his was virtual despite his well-known disabilities. Additionally, he described several technical issues that took place

during interview, including transmission issues throughout the interview that caused the panelists' questions to be cut off at times, and caused him to experience anxiety symptoms associated with his OCD. Therefore, as P.S. had presented allegations that the selection process was predetermined, and at minimum, the appointing authority has not refuted that technical issues occurred during P.S.'s interview which may have impacted his performance, the Commission could not be certain that the selections were made in compliance with Civil Service guidelines. Consequently, the Commission remanded the matter back to the appointing authority to re-interview, in-person, the eight¹ employees currently employed by the appointing authority on the subject certification and directed the appointing authority to advise the appointed candidates that their appointments were conditional, subject to the results of the re-interviews and selections, as well as any subsequent appeals.

In its request, the appointing authority argues that clear material error occurred as it did not receive P.S.'s reply to its response to the appeal. It presents that it replied to the appeal on March 29, 2022, and then received the Commission's decision on June 20, 2022. The appointing authority highlights that in the decision, the Commission stated that the appointing authority did not refute P.S.'s claims. It reiterates that it has no record of ever receiving P.S.'s reply that presented additional claims and allegations that were cited in the decision. The appointing authority asserts that had it received this response, it would have immediately investigated these claims and provided a timely response. For example, it indicates that it was not put on notice that P.S. alleged that other candidates were interviewed in-person. However, the appointing authority presents that all candidates were interviewed remotely, except for one, who experienced unresolved technical difficulties. It states that it would have further investigated the allegation and evidence that the selection process was predetermined. Therefore, the appointing authority is petitioning the Commission to reconsider its decision to allow it the opportunity to thoroughly investigate this matter and provide a timely response.

In response, P.S., represented by Robert K. Chewning, Esq., had his attorney contact this agency on April 4, 2022, to inquire whether the appointing authority submitted a response to his appeal, when it was discovered that the appointing authority had submitted a response. On April 20, 2022, P.S. submitted his reply brief, his certification, and a certification from the 10th ranked candidate to this agency and the appointing authority by email. On May 4, 2022, P.S.'s attorney inquired to this agency by email as to whether the appointing authority responded to his reply and the appointing authority was copied on this inquiry. In response, this agency submitted to P.S.'s attorney the appointing authority's March 29, 2022 response. On May 16, 2022, P.S. submitted by email a letter which supplemented his certification which was copied to the appointing authority. On June 20, 2022, the Commission issued its decision remanding the matter to the appointing authority to re-interview the eight currently employed candidates. On July 18, 2022, the appointing authority

¹ The seventh and 10th ranked candidates are no longer employed by the appointing authority.

filed its request for reconsideration alleging that it never received P.S.'s reply to its response and requesting the opportunity to investigate P.S.'s claims.

P.S. argues that the appointing authority's request should be denied as he asserts that it received all his submissions and chose not to respond. He claims that the appointing authority's request is another example of a discriminatory practice designed to prevent him from obtaining a deserved promotion. P.S. highlights that the appointing authority's Assistant Commissioner, who is the appointing authority's representative, was copied by email on all his submissions. He also contends that the appointing authority had ample time to investigate his allegations. P.S. states that it was the appointing authority who did not copy him on its submissions as he only received them after contacting this agency. He argues that based on emails that confirm that his responses were sent to the Assistant Commissioner, the appointing authority's request should be denied as it should not be afforded "a second bite at the apple" because it disagrees with the Commission's decision.

P.S. argues that the appointing authority has failed to meet the standard for reconsideration. He states that P.S.'s only "new evidence" was that only one candidate had an in-person interview. However, P.S. asserts that this "new evidence" only confirms his claim that he was not provided an in-person interview for his disabilities while another candidate was. Therefore, he believes that this "new evidence" should not change the Commission's decision. P.S. notes that the appointing authority does not dispute his claim that the interview was predetermined, but requests to investigate the matter. However, he contends that the appointing authority has not provided a valid reason why it has not investigated the matter when it received the Commission's decision that was issued on June 20, 2022. Further, even if true that only one candidate had an in-person interview and the interviews were not predetermined, this would not change the fact that P.S. experienced technical difficulties that impacted his performance in the promotional interview as the Commission found that this fact alone was enough to question whether the selections were made in accordance with Civil Service guidelines.

P.S. argues that he has been discriminated against throughout his career and the appointing authority's decision to request reconsideration rather than comply with the Commission's order is another example of discrimination against him. P.S. highlights his disabilities including Tourette's Syndrome, profound/severe hearing loss, anatomical disfigurement of ears and OCD and the appointing authority was aware of his disabilities. For example, he provides that he requested a reasonable accommodation to wear a face shield instead of a mask due to his disabilities, which was denied, while a co-worker outside his unit was granted the same request. P.S. believes that the appointing authority's decision to continue with his virtual interview, despite the technical difficulties, is another example of discrimination against him as it does not want to promote him and "deal" with his disabilities. He

requests that the Commission set a reasonable time for the re-interviews to be completed.

In reply, the appointing authority states that on November 15, 2021, it conducted interviews in accordance with standard practice. It states that the four-member interview panel ranked P.S. as the lowest scoring candidate based on his interview as his score was 309 compared to 468 for the highest scoring candidate. Specifically, the appointing authority indicates that P.S. did not demonstrate experience or knowledge in budgeting, forecasting, approving expenses, financial reporting, accrual-based accounting, cost allocations, and federal reporting. Therefore, he was not selected for any of the six vacancies for a position as an Administrative Analyst 3. In response to P.S.'s appeal, the appointing authority conducted an inquiry and found that his bypass was based on legitimate business reasons and its appointments were based on standard hiring practices.

The appointing authority presents that evidence corroborated that some interviews were conducted virtually while others may have been in-person. It states that Human Resources recommended virtual interviews as it was the height of the pandemic in November 2021. The appointing authority acknowledges that there were technical difficulties during the interview process due to poor Wi-Fi connections in some locations in the building. It provides that its inquiry found that P.S. was among the candidates who experienced technical difficulties during his virtual interview. The appointing authority states that its decision to conduct some interviews in-person to avoid technical difficulties was a legitimate business decision in response to technical issues and was not bias against P.S. It presents that it resolved P.S.'s technical difficulties by relocating him to the library. The appointing authority indicates that there is no evidence that P.S. requested and was denied an opportunity for an in-person interview because of technical difficulties, or he experienced any symptoms related to his disability because of technical difficulties.

The appointing authority states that none of the interview panelists, or any other witness, corroborated the 10th candidate's allegation that one of the interview panelists stated at the end of her interview that the subject positions were for those who were already provisionally appointed. It also highlights that P.S. did not request an Americans with Disabilities Act (ADA) accommodation for the interview process. Moreover, he did not request to have an in-person interview in response to the technical difficulties that he was experiencing. The appointing authority argues that if he had, his argument would be more compelling. It reiterates that its decision to bypass him was based on his interview score, which was lower than the other candidates, and not his disability. The appointing authority emphasizes that there is no evidence that the panel's scoring or selection process was discriminatory against P.S. based on his disability. It presents that all candidates were asked the same questions and scored based on their responses. The appointing authority highlights that P.S. did not inform the panel of any symptoms relating to his disability that may

have been impacting his performance during his interview and his interview was scored in the same matter as the other candidates and his disability was not a factor in his score.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In this matter, the appointing authority has not met the standard for reconsideration. The determinative facts in the Commission's decision were P.S. has a disability, P.S. experienced technical difficulties during his virtual interview, and P.S. claimed that these technical difficulties impacted his performance. Based on these facts alone, the Commission found that it could not be certain that the selections were made in compliance with Civil Service guidelines. Therefore, it remanded the matter back to the appointing authority to re-interview, in-person, the eight candidates still employed by it.

On reconsideration, the appointing authority claims that it did not receive P.S.'s responses and, therefore, it did not have the opportunity to investigate his allegations and respond to them. However, even if true, the appointing authority is not disputing that P.S. has a disability and is not disputing that there were technical difficulties during his virtual interview. Further, P.S. has no way of knowing how these technical difficulties impacted P.S. In other words, there was no investigation by the appointing authority that could have led to a response that would have impacted the Commission's decision. Moreover, on reconsideration, the appointing authority initially asked for the opportunity to further investigate the matter. It is noted that the Commission's decision was issued June 20, 2022. Therefore, it has been afforded ample time to investigate the matter even without its request being granted. Additionally, based on the appointing authority's reply to P.S.'s response in this matter, it appears that it has further investigated P.S.'s allegations. Therefore, the Commission finds this request moot. Furthermore, while the Commission found that P.S.'s technical difficulties during his interview alone, regardless of whether some candidates were interviewed in-person, were sufficient to order the remand, the appointing authority's reply in this matter only further supports the Commission's decision as it confirms that some candidates² were afforded the opportunity to interview in-person, while P.S. was interviewed virtually. As such, there is no new

² The appointing authority's reconsideration request initially indicated that only one other candidate had an in-person interview. However, its reply to P.S.'s response indicates that some candidates had in-person interviews.

evidence or clear material error that has been presented by the appointing authority that would have changed the Commission's decision.

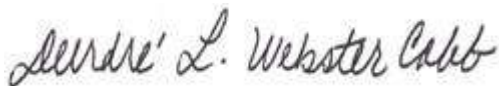
It is also noted that the appointing authority appears to have misinterpreted the Commission's decision. While the Commission noted that there was some evidence presented that indicated that the appointments were predetermined, the Commission made no determination in this regard and this was not a factor in its decision. Similarly, on reconsideration, the appointing authority asserts that its decisions were based on legitimate business reasons. However, the Commission made no decision on whether the appointing authority had acted in bad faith. Instead, the Commission found, regardless of the appointing authority intentions, due to the extenuating circumstances presented in this matter, it could not determine whether the appointments were based on merit and fitness as required under the State Constitution and other applicable Civil Service law and rules. Nothing that has been presented on reconsideration changes this finding.

ORDER

Therefore, it is ordered that this request be denied. This matter shall be remanded to the appointing authority to re-interview the candidates and redispense of the certification within 60 days of the receipt of this decision.

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 2ND DAY OF NOVEMBER, 2022



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