STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of George Hamilton,
Maintenance Supervisor (PC3106E),
Bergen County Utilities Authority

Bypass Appeal

CSC Docket No. 2024-1420

ISSUED: July 24, 2024 **(EG)**

George Hamilton appeals the bypass of his name on the Maintenance Supervisor (PC3106E), Bergen County Utilities Authority eligible list.

By way of background, the appellant appeared as a disabled veteran on the subject eligible list, which promulgated on September 7, 2023, with four eligibles and expires on September 6, 2026. A certification of four eligibles was issued on September 11, 2023, (PL1231756) with the appellant as the only veteran and listed in the third position. In disposing of the certification, the appointing authority appointed the eligible in the first position, bypassed the eligible in the second position and the appellant, and appointed the eligible in the fourth position.

On appeal to the Civil Service Commission (Commission), the appellant argues that the appointing authority violated the "Rule of Three" and veteran preference rules in bypassing him for appointment. He contends that the appointing authority has a history of violating veteran's preference rules.

In response, the appointing authority represented by Eric M. Bernstein, Esq., argues that it properly exercised its discretion under the "Rule of Three" to appoint the candidates it deemed most qualified. Specifically, it stated that once the number one eligible was appointed the candidates all move up position in the certification. It contends that it then bypassed the first and second eligibles to appoint the eligible in the now third position as it is permitted to do so under Civil Service rules. Further,

it asserts that the eligible it appointed was the most qualified based on his overall experience and his time in the position on a provisional basis.

In reply, the appellant requests that the Commission review these appointments as he does not believe that the certification list gets re-ranked after each appointment.

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)3ii allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Moreover, the "Rule of Three" allows an appointing authority to use discretion in making appointments. *See N.J.S.A.* 11A:4-8 and *N.J.A.C.* 4A:4-4.8(a)3ii. As long as that discretion is utilized properly, an appointing authority's decision will not be overturned. *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). Additionally, it is noted that the appellant has the burden of proof in this matter. *See N.J.A.C.* 4A:2-1.4(c). Further, *N.J.A.C.* 4A:5-2.2(b) provides that a list of eligibles who have passed a promotional examination shall appear in the order of their scores regardless of veteran or nonveteran status. Moreover, *N.J.A.C.* 4A:5-2.2(e) states that if there is more than one vacancy, and a veteran is ranked first on the certification as a result of the first appointment from the certification, then a veteran must be appointed to the next vacancy. If, as a result of the second appointment, another veteran heads the certification, then a veteran must be appointed to the third vacancy. This process shall be followed for each appointment that is made from the same certification.

In the instant matter, the appellant has objected to being bypassed for appointment and claims his veterans preference was violated. The Commission does not agree. At no time did the appellant head the list or certification and as such his name could be bypassed for appointment under Civil Service law and rules. Once the number one eligible was appointed, the list was re-ranked per *N.J.A.C.* 4A:5-2.2(e). At this point, the eligible heading the list was a non-veteran. Therefore, the appointing authority was correct in indicating that the now number one non-veteran eligible and the number two veteran eligible could be bypassed to appoint the number three eligible. The appointing authority asserts that it properly exercised its discretion under the "Rule of Three" to appoint the candidate it deemed most qualified. In this regard, the appellant has not rebutted the appointing authority's assertions. He has not presented any substantive evidence regarding his bypass that would lead the Commission to conclude that the bypass was improper or an abuse of the appointing authority's discretion under the "Rule of Three." Moreover, the appointing authority presented legitimate reasons for the appellant's bypass that
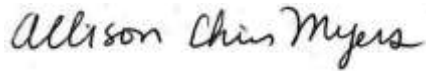
have not been persuasively refuted. Furthermore, the Commission notes that appellant does not possess a vested property interest in the position. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the Maintenance Supervisor (PC3106E), Bergen County Utilities Authority eligible list was proper, and the appellant has failed to meet his 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 JULY, 2024

Allison Chris Myers

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Allison Chris Myers
Chairperson
Civil Service Commission

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