



STATE OF NEW JERSEY

In the Matter of Makhosini Dhlamini,
County Correctional Police Sergeant
(PC4825C), Hudson County

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

CSC Docket No. 2025-988

Bypass Appeal

ISSUED: April 9, 2025 (ABR)

Makhosini Dhlamini, represented by Patrick P. Toscano, Jr., Esq., appeals the bypass of his name on the promotional list for County Correctional Police Sergeant (PC4825C), Hudson County.

By way of background, the subject examination was announced with a closing date of November 22, 2021. The subject eligible list, containing 67 names, promulgated on December 29, 2022, and expires on December 28, 2025. The appellant, a nonveteran, was ranked 17th on the subject eligible list. Certifications from the subject eligible list were issued on May 2, 2023, (PL230745)¹ and July 25, 2024, (PL241188). On the PL241188 certification at issue, the appellant's name was listed in the sixth position. In disposing of the certification on December 1, 2022, the appointing authority, among other things, bypassed the eligible in the first position and the appellant, and appointed the eligibles listed in the second through fifth and eighth through tenth positions.

On appeal to the Civil Service Commission (Commission), the appellant argues that the appointing authority's decision to bypass him was improper, based upon *N.J.A.C. 4A:2-1.7(a)13* and *N.J.A.C. 4A:2-5.2(a)*.

¹ The appellant was not reachable for appointment on the PL230745 certification. In disposing of the PL230745 certification, the appointing authority appointed the eligibles ranked first, third, fourth, fifth, sixth, seventh, ninth, tenth, 11th and 12th; bypassed the eligible ranked second; and removed the eighth-ranked eligible for failing to respond to the certification.

In response, the appointing authority, represented by Seraphema Menna, Esq., contends that it properly bypassed the appellant on the basis of his extensive disciplinary history. In particular, it emphasizes the appellant's history of multiple attendance-related infractions, an arrest, and suspensions for assaulting an inmate, improperly discharging chemical spray and bringing a loaded weapon into a secured facility. It further presents that, pursuant to Attorney General Directive No. 2018-3, the appellant was on an "Action Plan" until November 2024, which meant that he was still on an Attorney General-mandated probationary status with the Prosecutor's Office. The appointing authority further notes that in *In the Matter of Makhosini Dhlamini*, (CSC, decided November 1, 2023), the Commission upheld its bypass of the appellant on the September 16, 2022, certification (PL221315) from the prior list for County Correctional Police Sergeant (PC2926W), Hudson County, for the same reasons cited here. The appointing authority avers that its rationale for bypassing the appellant when disposing of the PL241188 certification is consistent with *N.J.A.C. 4A:4-4.7*. It maintains that the appellant has not presented any evidence that the current bypass at issue was pretextual or improperly motivated and notes that the appellant has not presented any arguments or support for his claim that the appointing authority engaged in a reprisal action. The appointing authority presents that the lower-ranked eligibles it appointed from the subject certification did not possess comparably severe or repetitive disciplinary histories. Conversely, it submits that the other individual it bypassed when disposing of the PL241188 certification, the second-ranked eligible, was bypassed because of a disciplinary history that was less egregious than that of the appellant. The appointing authority emphasizes that the appellant's disciplinary record indicates that he does not possess the necessary skills and competency to serve as a County Correctional Police Sergeant and that his inability to follow workplace rules, including those that involve the health and safety of his colleagues and the inmates for whom they are responsible, does not set a suitable example for subordinate County Correctional Police Officers. Based upon the foregoing, the appointing authority avers that the appellant's bypass should be sustained.

The appellant has not submitted any further arguments in response to the appointing authority's reply to the appellant's appeal.

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, it is noted that the appellant has the burden of proof in this matter. *See N.J.A.C. 4A:2-1.4(c)*.

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).

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).

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 actions is warranted. See *Jamison v. Rockaway Township Board of Education*, 242 N.J. Super. 436 (App. Div. 1990). In *Jamison*, *supra* at 436, 445, the Court outlined the burden of proof necessary to establish discriminatory and 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 they show that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the complainant sustain this burden, the complainant 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 this motive.

Here, it cannot be said the appellant has made even a *prima facie* showing that the bypass was improper. Rather, on appeal, he merely cites the rules permitting employees to appeal reprisal or coercion to the Commission, N.J.A.C. 4A:2-1.7(a)13 and N.J.A.C. 4A:2-5.2(a), without advancing a specific narrative or evidence for why he considers the appointing authority's action to have been a reprisal. Since, pursuant to N.J.A.C. 4A:2-1.4(c), the appellant bears the burden of proof in this matter, he cannot expect the Commission to make his arguments for him. Further, it is inescapable that the facts of this bypass are essentially the same as those that the Commission found adequately supported the appointing authority's bypass of the appellant in its November 1, 2023, decision, but with the additional fact of the appellant being on a probationary status through November 2024.

Accordingly, a review of the record indicates that the appointing authority's bypass of the appellant's name was proper and that the appellant has not met his burden of proof on this issue. Similarly, the record does not evidence that the appointing authority engaged in any form of reprisal and the appellant has not met 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 9TH DAY OF APRIL, 2025



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