



STATE OF NEW JERSEY

In the Matter of Daniel Fitzgerald,
Police Chief (PM2068B), Seaside
Park

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

CSC Docket No. 2025-2445

List Bypass Appeal

ISSUED: November 5, 2025 (HS)

Daniel Fitzgerald, represented by Patrick P. Toscano, Jr., appeals the bypass of his name on the Police Chief (PM2068B), Seaside Park, eligible list.

The appellant appeared as the first ranked non-veteran eligible on the subject Police Chief (PM2068B) eligible list, which promulgated on December 2, 2021 and expires on December 1, 2025. A certification, consisting of the names of two eligibles, was issued on April 17, 2025 (PL250634) with the appellant listed in the first position. In disposing of the certification, the appointing authority bypassed the appellant and permanently appointed, effective May 1, 2025, B.M., the second listed eligible.

In his appeal to the Civil Service Commission (Commission), postmarked May 2, 2025, the appellant alleges that he was illegally bypassed for improper political reasons.

In response, the appointing authority denies the allegation and maintains that the decision to appoint B.M. was based on his superior performance in the oral interview:

[T]he Borough conducted oral interviews to assess the candidates' qualifications, leadership abilities, and vision for the role of Chief of Police. [B.M.] demonstrated exceptional performance during his oral interview, presenting a clear and compelling vision for the department, which distinguished him from [the appellant]. During the interviews,

[B.M.] distinguished himself by presenting specific proposals regarding deployment of personnel and new hiring programs which impressed the governing body. [B.M.] further demonstrated qualities that the Borough sought in selection of a Chief when expressing his intention to be a very public-facing Chief attending events and patrolling regularly, including on weekends. [The appellant] emphasized his administrative expertise and willingness to learn, but did not make any proposals for deployment change nor express any intention to significantly increase the amount of his interactions with the public. [The appellant] had served as Officer in Charge for a number of months, and the governing body had the opportunity to evaluate his performance throughout this time.

In reply, the appellant argues that the interview consisted of questions that did not appear to be structured in a way that could have a standardized rating system or be fairly evaluated, and this stands in contrast to the appointing authority's use of IPMA-HR's Police Officer Structured Interview System to select Class I and II Special Law Enforcement Officers (SLEOs). The appellant also complains that the interview panel consisted of the borough council, the borough administrator, and the borough labor attorney and that there were no active or former police personnel involved in the process to offer practical insight into what is required to perform the duties of Police Chief. The appellant proffers that B.M. had falsified his resume by claiming that he was currently assigned to an administrative role within the department. He claims that changes implemented by B.M. have "proven disastrous and potentially dangerous" to the officers of the Seaside Park Police Department, which demonstrates his lack of leadership and unclear vision for the agency. These include a bicycle patrol that has not been implemented safely; reducing shift coverage to a minimum of one full-time officer and one Class II SLEO in an attempt to reduce overtime, which is unsafe and contrary to statute; and attempting to reduce overtime by permitting the use of comp time by officers at times that had previously been prohibited. The appellant also claims that B.M. covered a shift with overtime without following established call-out procedures and that scheduling over the Memorial Day weekend lacked adequate coverage, particularly with SLEOs, during traditionally peak hours. Further:

The governing body's fallacious and ill-advanced claim that [B.M.] intends to be a very "public-facing" Chief further shows that politics wholly influenced their choice. **It was reported on December 9, 2024, that [B.M.], while on duty and in uniform, attended the Seaside Park Republican Club Christmas Party.** Before the borough chose to promote [B.M.], it was mentioned to [the appellant] (by a member of the Seaside Park Planning Board) that "[B.M.] attends a lot of Republican Club Meetings."¹ [B.M.]'s social interactions with members

¹ The appellant does not name this Planning Board member or explain the member's involvement in the selection process.

of the governing body have undoubtedly influenced their decision, which directly contradicts the civil service's goal of addressing the spoils system of government appointments and promoting a more professional and merit-based civil service. This system prioritized hiring and promotions based on qualifications and performance rather than political connections or personal relationships (appellant's emphasis).

The appellant insists there were no concerns with his performance as Officer in Charge. In contrast, he states, over time, performance issues regarding B.M. were raised to the borough officials including, but not limited to: mismanagement as the Internal Affairs Unit Supervisor that resulted in the Ocean County Prosecutor's Office recommending to the then-Police Chief that B.M. be removed from that position; mismanagement and violation of departmental policy and Attorney General Guidelines for the body worn camera program that B.M. was assigned as the supervisor; and lack of accountability for LESO firearms equipment and lack of information in a report that B.M. approved for the loss of \$9,800 in firearms equipment. The appellant contends that had the borough conducted an exhaustive background investigation or review of employee performance and records, these incidents would have been identified, but it did not.² It is noted that the appellant did not submit any supporting documents or exhibits, and he did not provide a certified statement.

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).

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 445, the court

² The appellant also highlights that he was bypassed in favor of J.B. on the December 6, 2021 certification (PL211423) from the subject Police Chief (PM2068B) eligible list without any reason being given. The disposition of this earlier certification was recorded April 5, 2022. However, the appellant did not file an appeal of his 2022 bypass. Thus, any appeal of such disposition is untimely at this time. *See N.J.A.C.* 4A:2-1.1(b) (providing, in pertinent part, that appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed). Nevertheless, the Commission observes, for informational purposes only, that J.B. had been serving provisionally in the title. The former Merit System Board has found that provisional experience is valuable and should not be overlooked in the selection process. *See In the Matter of Mahasen Adra-Halwani* (MSB, decided October 5, 2005). Thus, it is reasonable that if he was reachable under the "Rule of Three," the appointing authority would want to permanently appoint its provisional appointee. *See In the Matter of Terrence Crowder* (CSC, decided April 15, 2009).

outlined the burden of proof necessary to establish discriminatory or 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 he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she 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 the discriminatory or retaliatory motive. In a case such as this, where the adverse action is failure to promote, the employer would then have the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.

Since the first listed eligible was a non-veteran, it was within the appointing authority's discretion to select any of the top three interested eligibles on the certification for the appointment. The appellant alleges he was bypassed based on improper political reasons. The appointing authority responds that it bypassed the appellant and selected B.M. based on a better interview performance. Appointing authorities are permitted to interview candidates and base their hiring decisions on the interview. This is within the appointing authority's discretion and may apply to all positions, including Police Chief. However, interviews, whether structured or not, are not required. See *In the Matter of Nicholas R. Foglio* (CSC, decided February 22, 2012). It is within the appointing authority's discretion to choose its selection method, *i.e.*, whether or not to interview candidates. 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). Thus, since conducting interviews is discretionary, any purported lack of structure in the interview is not cause to find that the appellant's bypass was improper. So long as the hiring decision is in compliance with *N.J.A.C.* 4A:4-4.8(a)3, the Commission cannot find that the interview was conducted inappropriately.

The appellant has not produced any substantive evidence to suggest that the appointing authority's proffered reasons may have been pretextual or that an improper reason more likely motivated the appointing authority to bypass him. Where the appellant specifically addresses the issue of politics, he alleges only that B.M. attended the Seaside Park Republican Club Christmas Party on December 9, 2024 and that "a member of the Seaside Park Planning Board" mentioned to the appellant that "[B.M.] attends a lot of Republican Club Meetings." At best, the allegations are some evidence of B.M.'s activities, not of pretext or an improper motive by the appointing authority when it made its selection.

Similarly, the appellant's statements that he was dissatisfied with the composition of the interview panel; that B.M. falsified his resume by claiming to be currently assigned to an administrative role; that some changes implemented by B.M. have turned out to be problematic; that there were no concerns with the appellant's performance as Officer in Charge; and that performance issues regarding B.M. were raised to the borough officials are insufficient to provide substantive evidence of pretext or an improper motive by the appointing authority. In this regard, while the appellant may have preferred to have police personnel on the interview panel, the Commission has not been presented with any substantive reason to doubt that the borough council, administrator, and labor attorney were familiar with the position at issue or show that they were otherwise unqualified to constitute the panel. With respect to the claim that B.M.'s implemented operational changes have proven problematic in practice, there is not a sufficient basis to treat these as evidence that the appointing authority employed improper political considerations when it made its selection. Concerning B.M.'s alleged falsification of his resume and the claim that there were no concerns with the appellant's performance as Officer in Charge, while performance issues regarding B.M. have been raised to borough officials, it bears repeating that appointing authorities are permitted to interview candidates and base their hiring decisions on the interview. On the present record, there is not a sufficient basis to consider B.M.'s alleged falsification and performance issues as evidence of a pretextual interview process or improper political motivation.

At this juncture, it is also appropriate to emphasize that the appellant bears the burden of proof in this matter and note that his claims are not supported by any documentation, exhibits, or certified statement.

Additionally, even assuming, *arguendo*, that the appellant is more qualified for the position at issue, the appointing authority still has 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 antiunion 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 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. Accordingly, a review of the record indicates that the appointing authority's bypass

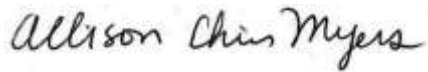
of the appellant's name was proper, and the appellant has not met his burden of proof in this matter.

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 5TH DAY OF NOVEMBER, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Daniel Fitzgerald
Patrick P. Toscano, Jr.
Karen Kroon
Division of Human Resource Information Services
Records Center