



STATE OF NEW JERSEY

In the Matter of Marco Velez, County	:	FINAL ADMINISTRATIVE ACTION
Correctional Police Sergeant	:	OF THE
(PC1536A), Camden County	:	CIVIL SERVICE COMMISSION
	:	
	:	
	:	
CSC Docket No. 2024-296	:	Bypass Appeal
	:	
	:	
	:	

ISSUED: February 28, 2024 (HS)

Marco Velez, represented by Robert K. Chewning, Esq., appeals the bypass of his name on the County Correctional Police Sergeant (PC1536A), Camden County eligible list.

The appellant appeared as the 16th ranked non-veteran eligible on the subject eligible list, which promulgated on November 11, 2021 and expires on November 10, 2024. A certification, consisting of the names of 14 eligibles, was issued on July 3, 2023 (PL231242) with the appellant listed in the seventh position. In disposing of the certification, the appointing authority, in pertinent part, bypassed the appellant; retained the eighth and ninth listed non-veteran eligibles as they were only interested in future certifications; and appointed, effective July 7, 2023, the 10th through 14th listed non-veteran eligibles.

On appeal to the Civil Service Commission (Commission), the appellant claims that the appointing authority bypassed his name as part of its pattern and practice of bad faith and retaliation against him though he was a meritorious candidate.

In response, the appointing authority, represented by Antonieta Paiva Rinaldi, Assistant County Counsel, maintains that all candidates' disciplinary history, employment history, and interview were taken into account. It presents that the appellant served a 180-day suspension in 2016 based on a 2015 incident where the appellant failed to intervene in a use of force incident; failed to write a use of force report; and lied during the Internal Affairs Unit interview. The appointing authority

further maintains that when the appellant was given the opportunity to discuss the discipline during his interview, he was vague in his response, saying only that he “would never do that again.” Additionally, the appointing authority states that the appellant had a difficult time with an assignment to the function of Supply Officer with Special Services (Supply Officer), which coordinates supplies for the incarcerated population, from March 2023 to his reassignment out of the function in June 2023. The appointing authority insists that the appellant still has the opportunity to be promoted if he shows growth and leadership skills.

The appointing authority acknowledges that the PC1536A list included the name of Michael Imbesi, who was also involved in the 2015 incident and who also served a 180-day suspension in 2016. Imbesi’s name was certified to the appointing authority on February 2, 2022 (PL220115), with Imbesi being bypassed for an appointment on that certification. The appointing authority states that following his bypass, Imbesi asked why that occurred and then offered an explanation of what he needed to do demonstrating that he was ready for the promotion. Imbesi’s name was again certified to the appointing authority on August 22, 2022 (PL221181), with Imbesi receiving a permanent appointment, effective November 13, 2022. In support, the appointing authority submits a chronology of the appellant’s discipline.

In reply, the appellant contends that the appointing authority has taken steps to remove and frustrate his attempts to advance his law enforcement career. The appellant relates that the appointing authority had initially released him after his working test period as a County Correctional Police Officer. The appellant appealed his release to the Commission, which transferred the appeal to the Office of Administrative Law. In lieu of proceeding with the hearing, the appointing authority agreed to reverse its decision to release the appellant and restore his employment status. Less than three years later, the appointing authority sought the appellant’s removal for the 2015 incident. In lieu of proceeding with the departmental hearing for his removal, the parties agreed to the 180-day suspension referenced earlier. The appellant highlights that the appointing authority admitted that it promoted Imbesi, who was similarly disciplined for the same event, but nevertheless utilized the appellant’s discipline as a basis for bypassing him. The appellant offers Imbesi’s certified statement, where Imbesi states that he never asked the appointing authority why he was bypassed or provided an explanation as to what he needed to do in order to demonstrate that he was ready for the promotion and that he never had a meeting with the appointing authority regarding why he was bypassed. The appellant argues that the appointing authority’s actions demonstrate its pattern and practice of bad faith, improper efforts to block the advancement of his law enforcement career, and disparate treatment towards him.

The appellant further argues that in an attempt to disguise its true motivations, the appointing authority required the candidates to undergo an interview process. The appellant relates that prior to the interview, he was not

informed about the interview process; he did not know what the questions would be; he did not know whether his performance would affect his chances of being promoted and, if so, what weight his interview performance would have in comparison to his rank on the eligible list. According to the appellant, during the interview, neither of the interviewers, Director David Owens and Deputy Warden Rebecca Franceschini, explained that his responses would affect his chances of being promoted. Further, his responses were not graded on an objective scale or standard. Therefore, in the appellant's view, the interview process itself should be found subjective and an improper tool for bypassing him because the appointing authority failed to put in any objective standards by which it would grade the interviewees' responses and failed to provide any explanation as to how the interviewees' performance would weigh in comparison to their rankings. In any event, the appellant insists that in the interview, he openly discussed the 2015 incident; provided a detailed account of the basis for the discipline; explained that he would never let that happen again; and explained how, if he was promoted, he would ensure that neither he nor his subordinates would be placed in that situation.

Regarding his stint as Supply Officer, the appellant maintains that he performed the function effectively, timely, and in accordance with requirements and notes that he was never formally disciplined or provided with a negative performance evaluation for his time as Supply Officer. The appellant insists that County Correctional Police Captain Tyefa Stallings, his supervisor in the role, sought to make his work environment unbearable as part of the appointing authority's pattern and practice of bad faith throughout his law enforcement career. In the appellant's telling, the actual reason given for his reassignment out of the function was that he was going to be promoted to County Correctional Police Sergeant.

Alternatively, the appellant requests that this matter be referred to the Office of Administrative Law for a hearing if his appeal cannot be granted on the written record.

In support, the appellant submits his certified statement; the March 2014 "Settlement Agreement and Release" pertaining to his working test period appeal; the September 2016 "Settlement Agreement and Release" pertaining to his disciplinary matter; and Imbesi's earlier-referenced certified statement. The working test period settlement agreement specifies that the appellant "releases and discharges from any liability [appointing authority] of any claims, actions and causes of action which he has or may have causing from this settlement." The disciplinary settlement agreement specifies that the appellant acknowledges his guilt on the charges and:

releases and discharges any and all liability against the [appointing authority] and as well as all agents, current and former employees and legal representatives of any and all claims, actions, and causes of action

which [the appellant] has or may have arising from or related to the aforementioned charges.

In reply, the appointing authority submits the certified statement of Franceschini where she states the following: promotional interviews have been conducted at the Department of Corrections since at least 2014; candidates are notified of their promotional interview before every interview; Owens gave a comprehensive preview of the interview process before the appellant's June 29, 2023 interview began; and Owens informed the appellant that the interview would be taken into consideration when making promotional decisions. In her certified statement, Franceschini further states the following: Owens asked the appellant to explain what he had learned from the 2015 incident; the appellant responded by saying, "I would never do that again," "What he did was wrong, not protocol," and "I will de-escalate;" these responses demonstrated a lack of self-accountability and responsibility; the appellant failed to identify how he himself was at fault, and he failed to go into meaningful depth as to how he would prevent a similar situation or how he would "de-escalate;" and he did not show remorse for his actions.

The appointing authority also submits the certified statement of Stallings where she states the following: she was part of the team that interviewed Imbesi in March 2022; Imbesi expressed remorse for his role in the 2015 incident and gave a thoughtful explanation of the lessons he learned from the incident, how he would avoid such an incident in the future, and how he would respond if a similar situation did occur. In her certified statement, Stallings further states the following: in his Supply Officer role, the appellant failed to stock enough mattresses on multiple occasions and there was no significant improvement in the appellant's performance; after another incident of insufficient mattresses, she told the appellant he was not doing his job, and he yelled at her and demanded a reassignment back to his previous function; the appellant had a pattern of absences on Fridays, which impacted his performance as Friday shipments are critical for ensuring adequate supplies over the weekend; she asked the appellant to organize files and load them into a truck for transport, but she found the files in disarray upon inspection though the appellant claimed to have finished the task; the appellant was reassigned to his previous function due to his continued neglect of his duties; and she never told the appellant that he was going to be promoted. The appointing authority further submits a copy of the appellant's June 20, 2023 e-mail acceptance for "Sergeant Interview-Officer Velez."

In reply, the appellant maintains that he had properly placed the files in the truck for transport and the alleged disarray was not the result of his performance. He also notes that on his performance evaluation for the period from January 1, 2023 to June 30, 2023 (which included his time as Supply Officer), the appellant was graded as "meeting standards" on all individual job responsibilities. The rater noted that the appellant "show[s] initiative by completing ask/assignments without being

asked, simply because he knows it needs to be completed.” Further, the appellant argues that the appointing authority effectively confirmed that its initial account of why Imbesi was promoted was false because it failed to provide a certified statement to establish that account. In support, the appellant submits a certified statement and a copy of his January 1, 2023 to June 30, 2023 performance evaluation.

CONCLUSION

Initially, bypass appeals are treated as reviews of the written record. *See N.J.S.A.* 11A:2-6b. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C.* 4A:2-1.1(d). For the reasons explained below, no material issue of disputed fact has been presented that would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

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).

Since the appellant, a non-veteran, was the seventh listed name on the certification, it was within the appointing authority’s discretion to select any of the top three interested eligibles on the certification for each vacancy filled. The appointing authority indicates that the appellant was bypassed due to the 180-day suspension he served in 2016 for the 2015 incident and his poor performance as Supply Officer. The appellant insists that his performance as Supply Officer was adequate. The Commission need not resolve that dispute because the fact of the appellant’s discipline is undisputed. It is well established that disciplinary actions may be considered in bypassing an individual for appointment. *See In the Matter of Paul DeMarco* (MSB, decided April 6, 2005) (appellant’s disciplinary action can be considered in determining whether he could be bypassed on the eligible list). An appointing authority has the discretion to dispose of a certification within the guidelines of Title 11A of the New Jersey Statutes Annotated and Title 4A of the New Jersey Administrative Code. This discretion includes utilizing each candidate’s history and qualifications to determine the best candidate from a list of three eligibles, any of whom may be selected under *N.J.A.C.* 4A:4-4.8(a)3. Additionally, the appointing authority was justified in considering the appellant’s discipline, notwithstanding that it had previously appointed Imbesi, who was also involved in the 2015 incident and who also served a 180-day suspension in 2016. In this regard, Imbesi was *not* appointed from the subject certification. Rather, he had been appointed approximately eight months before from an earlier certification. As such, comparing the appellant with Imbesi is not dispositive. Further, no suggestion has been made that the eligibles listed in the 10th through 14th positions on the *subject*

certification have disciplinary histories that are in any way comparable to the appellant's. Therefore, the dispute between the parties as to why and how Imbesi was appointed is ultimately immaterial to the outcome of this matter.

The appellant also argues that the interview process was the appointing authority's attempt to disguise its true bad faith motivations. Specifically, he contends that he was not informed about the interview process prior to the interview; he did not know what the questions would be; he did not know whether his performance would affect his chances of being promoted and, if so, what weight his interview performance would have in comparison to his rank on the eligible list; and his responses were not graded on an objective scale or standard. These contentions are not persuasive. On June 20, 2023, the appellant accepted an invitation for "Sergeant Interview-Officer Velez." 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 County Correctional Police Sergeant. 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. Further, the appellant points to no authority for the proposition that he was entitled to advance knowledge of the interview questions.

With respect to the appellant's interview performance itself, the appointing authority maintains that the appellant gave a vague response when given the opportunity to discuss his discipline. Specifically, Franceschini, one of the interviewers, states the following: Owens asked the appellant to explain what he had learned from the 2015 incident; the appellant responded by saying, "I would never do that again," "What he did was wrong, not protocol," and "I will de-escalate;" these responses demonstrated a lack of self-accountability and responsibility; the appellant failed to identify how he himself was at fault, and he failed to go into meaningful depth as to how he would prevent a similar situation or how he would "de-escalate;" and he did not show remorse for his actions. The appellant insists that he openly discussed the 2015 incident; provided a detailed account of the basis for the discipline; explained that he would never let that happen again; and explained how, if he was promoted, he would ensure that neither he nor his subordinates would be placed in that situation. At heart, this is merely a disagreement over what constituted an adequate response. The Commission will not disturb the appointing authority's

assessment in that regard unless the record suggests an illegitimate motive on its part. However, mere disagreement between an appointing authority and a candidate over whether an answer is responsive to the question posed, without more, is insufficient to establish an illegitimate motive.

The Commission declines to address the appellant's arguments that his initial release at the end of his working test period and the appointing authority's initially seeking his removal for the 2015 incident were examples of its bad faith. In settling each of those matters, the appellant agreed to release and discharge the appointing authority from any associated liability and claims. As such, the appellant is precluded from now claiming that the appointing authority acted in bad faith in those prior matters.

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 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). 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 28TH DAY OF FEBRUARY, 2024

Allison Chris Myers

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: Marco Velez
Robert K. Chewning, Esq.
Catherine Binowski
Antonieta Paiva Rinaldi, Assistant County Counsel
Division of Human Resource Information Services
Records Center