

The examination was processed as a “ranked unassembled” examination involving the evaluation of education, training, and experience as set forth on the candidates’ examination applications.² On her application and resume, Mughis-Sohrawardy listed, among other things, that she possessed a Master of Science degree in Engineering and served in various levels as an Environmental Engineer from March 2004 to the closing date, July 21, 2016. On his application and resume, Salvo listed, among other things, that he possessed a Master of Science degree in Environmental Policy Studies³ from the New Jersey Institute of Technology (NJIT)⁴ and served as an Environmental Specialist 3 from August 2001 to July 2016. On his application and resume, Wu listed, among other things, that he possessed a Master of Science degree in Engineering and served as an Environmental Engineer 2 from June 2008 to July 2016, and as an Assistant Environmental Engineer from October 2005 to June 2008. Based on the aforementioned information provided, Agency Services determined that Mughis-Sohrawardy, Salvo, and Wu, among others, were eligible for the PS3149G promotional examination.

In disposing of the PS161588 certification, the appointing authority bypassed Mughis-Sohrawardy, a non-veteran, who was tied with two others as the number one ranked eligible on the certification, and appointed Salvo, a non-veteran, who was tied as the fourth ranked eligible, effective February 18, 2017. The appointing authority listed Mughis-Sohrawardy as “Retained, Interested Others Appointed.” Wu, a non-veteran, was the sixth ranked candidate and was listed on the PS161588 certification as “Retained, Interested Others Appointed – not reachable for appointment.”

MUGHIS-SOHRWARDY’S APPEAL

On appeal to the Civil Service Commission (Commission), Mughis-Sohrawardy argues that she was improperly bypassed on the PS161588 certification. She argues that Salvo was appointed despite that he does not possess the required educational and professional experience for the position at issue.

² Agency Services assigned the candidates’ scores on a month to month basis for applicable experience gained within 10 years of the closing date. The applicants’ Master’s degrees were only used to determine examination eligibility and were not included in the scores. The scoring standard gave full credit for experience in water quality modeling, water supply management, and/or environmental engineering involving ground and surface water programs. Additional points were calculated for seniority and PAR scores.

³ The Master of Science degree in Environmental Policy Studies is administered by NJIT’s Department of Chemistry and Environmental Science, College of Science and Liberal Arts.

⁴ NJIT is an accredited science and technology university that contains five colleges and one school, one of which is the College of Science and Liberal Arts. The College of Science and Liberal Arts prepares students for professional and public leadership with essential specialized knowledge and social intelligence, including the foundation for careers in law and medicine. Major fields include: applied physics, biology, chemistry, math, environmental science, communications and other liberal arts. The college consists of six academic departments including Biological Sciences, Chemistry and Environmental Science, Federated History, Humanities, Mathematical Science, and Physics.

Specifically, Mughis-Sohrawardy explains that she indicated on her application for the PS3149G examination that she possesses a Master's degree in Environmental Engineering, and Salvo's Master's degree in Environmental Policy Studies is not the equivalent to an Environmental Science or an Environmental Engineering degree. As such, Salvo does not meet the educational requirements listed in the PS3149G announcement. In addition, Mughis-Sohrawardy asserts that the appointing authority has not demonstrated that Salvo was more qualified than the other candidates at the time of his appointment. In this regard, she states that Salvo's background, education, training, and employee evaluations, do not evidence that he possessed greater experience in water quality monitoring, stormwater modeling, and hydraulic modeling at the time of his appointment.

Additionally, Mughis-Sohrawardy explains that she is currently serving as an Environmental Engineer 3, and her duties include developing and issuing treatment works approval applications, reviewing plans, reviewing maps, issuing authorizations for construction of sanitary sewer extensions, examining, reviewing and evaluating State and federally funded projects, and recommending projects involving water quality monitoring. As such, she maintains that she is more qualified than Salvo for the position at issue. Moreover, she claims that she was discriminated against on the basis of gender, race and religion as a result of the bypass, as she ranked higher than Salvo on the PS161588 certification.⁵

In response, the appointing authority maintains that, at the time of the candidate interviews, a consensus scoring method was utilized to process and evaluate the candidates. The appointing authority explains that, based on the candidate's responses, one of the top three candidates was appointed for each position.

WU's APPEAL

On appeal to the Commission, Wu asserts that Salvo does not meet the educational requirements listed in the PS3149G announcement, as he does not possess the appropriate degree, *i.e.*, a Master's degree in the physical, biological or environmental sciences, or in a field of engineering related to water resources. Wu maintains that the only types of Master's degrees that should have been accepted by Agency Services were those that were obtained in the specific fields indicated in the announcement. He maintains that the educational requirement listed in the promotional announcement was clear and unambiguous.

⁵ Mughis-Sohrawardy stated to staff from the Division of Appeals and Regulatory Affairs during a telephone conversation that she has a pending EEO complaint pertaining to issues surrounding her bypass from the aforementioned list. The appointing authority's Office of Equal Opportunity confirmed that the appellant's complaint in that regard is still pending.

Additionally, Wu explains that Salvo earned his degree from NJIT. He explains that NJIT maintains separate academic departments, and the curriculum for the Master's degree in Environmental Policy Studies is a separate curriculum from the Master's degree in Environmental Science. As such, while Salvo's Master's degree in Environmental Policy Studies contains the word "Science," such information does not establish that he was qualified for the examination, as NJIT's Master of Science degree is a broad term showing only a type of graduate degree rather than the field of degree.

Additionally, Wu argues that the Master's degree in Environmental Policy Studies does not evidence that Salvo has the ability to perform the duties of an Environmental Scientist 2, Water Resources. Wu contends that, although Salvo completed some relevant courses, such course work did not provide him with the ability to perform the duties as a scientist that would enable him to complete water quality models, provide scientific advice, analyze model results, and interpret technical and engineering specifications. Wu states that, although Salvo completed a course in Microbiology for Environmental Science, that course, by itself, does not evidence that Salvo was qualified for the examination or possessed the competency to perform the required scientific duties of the position at issue. In this regard, Wu argues that only individuals who possess a Master's degree in the fields of physical, biological, or environmental sciences, or in a field of engineering related to water resources, possess the knowledge to perform the duties of an Environmental Scientist 2, Water Resources.

Additionally, Wu contends that, in response to an Open Public Records Act (OPRA) request to this agency, staff from this agency redacted various course titles pertaining to Salvo's education, indicating that such courses were not germane to the educational qualifications for the title of Environmental Scientist 2, Water Resources. As such, Wu argues that this agency's response to his OPRA request establishes that Salvo's Master's degree does not meet the educational requirements for the PS3149G examination.

Despite being provided the opportunity, the appointing authority did not provide a response to Wu's appeal.

SALVO's RESPONSE

In response to the appeals, Salvo argues that Agency Services properly reviewed his application and determined that he was eligible for the examination for Environmental Scientist 2, Water Resources. Salvo maintains that his Master's degree in Environmental Policy Studies meets the educational requirements for Environmental Scientist 2, Water Resources listed in the announcement. He explains that the Master's degree in Environmental Policy Studies qualifies as Environmental Studies and Environmental Science, as it was offered by NJIT's

Department of Chemistry and Environmental Science. Salvo argues that NJIT's course descriptions for the Master's degree in Environmental Policy Studies includes topics such as complex interactions between environmental policy and the environment, physical and biological science, use of environmental policy tools, engineering, economics, science, law, resource management, pollution control, problem solving, identification, research, and data analysis. As such, he states that the courses that he completed, as well as courses completed at Rowan University and Richard Stockton College, encompass the physical, biological, and environmental sciences as indicated in the requirements of the announcement. Moreover, Salvo provides a copy of NJIT's course catalog, which contains course descriptions for the courses he completed.⁶

Additionally, Salvo asserts that the appointing authority conducted interviews for the candidates, including himself, Wu, and Mughis-Sohrawardy. Following the interview process, the appointing authority notified him that he was selected for appointment to the position at issue. Moreover, Salvo states that he completed a Working Test Period (WTP), and based on his background, qualifications, and current duties, he maintains that he is fully qualified for appointment as an Environmental Scientist 2, Water Resources.⁷ In support, Salvo presents letters of recommendation from his current and former supervisors, Susan Rosenwinkel, Section Chief, Environmental Protection, and Gabriel Mahon, an Environmental Engineer 4.

In response, Mughis-Sohrawardy argues that the Commission erred in admitting Salvo to the examination as two other applicants for the examination possessed the same degree from NJIT as Salvo and were rejected. She also generally objects to the admission of Salvo's letters of recommendation, contending that they do not establish his eligibility as well as indicate bias since Mahon was part of the interview process.

In response, Wu reiterates many of his above-mentioned arguments. In addition, he contends that, according NJIT's catalog, the Master's degree in

⁶ The courses listed on Salvo's NJIT transcript include Research Methods for Environment and Sustainability Policy, Special Topics in Environmental Science 1 – Microbiology for Environmental Science, Introduction to Environmental Policy Studies, Sustainable Politics and Policy, Energy Policy, Environmental Economics and Management, and Physical Geography.

⁷ Salvo notes that, from August 2001 to February 2017, he served in the Division of Water Quality, Bureau of Surface Water Permitting (BSWP). He states that he frequently reviewed and analyzed data for implementing discharge to surface water permit requirements which including completing water quality and quantity modeling for wastewater treatment facilities based on science and in accordance with State and federal rules and laws. In February 2017, he was assigned to work as an Environmental Scientist 2 and completed his 2017 employee evaluations for the Environmental Scientist 2 title with a final rating of exceptional. Additionally, his experience as a former Certified Subsurface Evaluator and Underground Storage Tank Closure environmental consultant from 1998 to 2001 included soil/groundwater sampling, site investigations, groundwater modeling, and other environmental tasks beneficial in performing his current duties.

Environmental Policy Studies is primarily focused on social sciences. As such, based on NJIT's course descriptions, the Environmental Policy Studies degree cannot be considered by this agency as related to Environmental Science.⁸ Moreover, Wu argues that the letters of recommendations from Salvo's supervisors should not be considered in this matter in order to avoid the appearance of favoritism and potential discrimination by the appointing authority.

In further support of his credentials, Salvo submits a letter dated December 4, 2017 from Maurie J. Cohen, Ph.D., Director, Program in Science, Technology, and Society, NJIT. Cohen confirms that he served as the Director of the Graduate Program in Environmental Policy Studies within the Department of Chemistry and Environmental Science, NJIT, at the time Salvo was enrolled at NJIT. He states that Salvo earned his degree in 2005, however, for budgetary reasons, the Environmental Policy Studies program has not been offered at NJIT for approximately 10 years. Cohen explains that a related graduate program in Environmental Science is offered at NJIT. He states that the aforementioned graduate programs required students to complete approximately half of their coursework in core courses and the other half in electives offered by the Department of Chemistry and Environmental Science consisting of 30 semester hour credits or 10 courses. Cohen states that Salvo's transcript documents that his coursework comprised of work including environmental policy, environmental economics, energy policy, environmental sciences, physical geography, coastal geomorphology, and microbiology. Cohen adds that students are required to complete several elective courses in an area of specialization that is of particular personal interest to them. Moreover, Cohen explains that Environmental Policy Studies graduate programs typically consist of coursework of an interdisciplinary nature including the social sciences, environmental sciences, public administration, and environmental management.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides that all applicants must meet all of the requirements listed on the promotional examination announcement by the closing date for filing applications. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant shall have the burden of proof in examination appeals, except for medical or psychological disqualification appeals, where the appointing authority will have the burden of proof. In order for education or experience to be considered applicable, it must mirror the degree areas and experience required in the examination announcement.

In this matter, the educational and experience requirements for the PS3149G examination were graduation from an accredited college or university with a Master's degree in one of the physical, biological or environmental sciences or, in a

⁸ Wu states that NJIT's course descriptions for Special Topics in Chemistry and Microbiology for Environmental Science may be tangentially related to environmental science.

field of engineering related to water resources, and three years of experience in water quality modeling, water supply management, and/or environmental engineering involving ground and surface water programs.

The appellants do not provide any substantive evidence to show that Salvo was not qualified for the examination. The Commission is satisfied that Salvo, based on his combined education and experience, was properly admitted to the PS3149G examination. Initially, at the time it was offered, the Master of Science degree in Environmental Policy Studies, as confirmed by the Director of Program in Science, Technology, and Society at NJIT, was administered by the Department of Chemistry and Environmental Science within the College of Science and Liberal Arts. The Director confirms that students who were enrolled in the Environmental Policy Studies program completed half of their coursework in core courses and the other half in electives offered by the Department of Chemistry and Environmental Science consisting of ten courses or 30 semester hour credits. In this regard, the Director explains that students in the Environmental Policy Studies graduate program completed a series of foundation courses in environmental social science, environmental science, research methods, economics, energy policy, and other advanced topics. The Director also confirms that the Master's degree in Environmental Policy Studies, at the time it was offered, was a similar program to the Master of Science degree in Environmental Science. Indeed, it is axiomatic that a Master of Science degree issued under the "Department of Chemistry and Environmental Science" necessitates it be considered as a degree in the "Environmental Sciences." Further, a review of the courses listed on Salvo's transcript reveal that he completed courses in, among other things, Research Methods for Environment and Sustainability Policy, Special Topics in Environmental Science 1 – Microbiology for Environmental Science, Introduction to Environmental Policy Studies, Sustainable Politics and Policy, Energy Policy, Environmental Economics and Management, and Physical Geography. A review of NJIT's course catalog in conjunction with the information noted above by the Director confirms that such courses are focused on environmental and sustainability policy, law, economics, planning, engineering, and the physical, biological and environmental sciences. Since the coursework involves the physical, biological, and environmental sciences, the Commission is satisfied that such coursework is acceptable and, therefore, satisfies the educational requirement listed in the PS3149G announcement.

With regard to the argument that the Master of Science in Environmental Policy Studies is not equivalent to the Master of Science Degree in Environmental Science and other science degrees offered by NJIT, the appellants have not established their contentions. The fact that NJIT maintains several Master's degree programs in various scientific fields does not change the outcome in this matter. As noted above, the Master's degree programs in Environmental Policy

Studies and in Environmental Science were administered by the Department of Chemistry and Environmental Science.

Regarding Wu's argument that certain information in response to his OPRA request was redacted, such information does not change the outcome of this matter or establish Wu's claims in this case. This agency has discretion to redact information disclosed in responses to OPRA requests. In this case, information pertaining to Salvo's coursework was not disclosed within the parameters of the OPRA request. Regardless, the Commission is satisfied that Wu had the opportunity to review Salvo's educational transcripts and submit sufficient arguments in support of his appeal. Moreover, the redactions do not establish that Agency Services, or after its review, the Commission, improperly accepted Salvo's education.

Further, Mughis-Sohrawardy's argument that the Commission erred in admitting Salvo since two other applicants with the exact same education were rejected is misplaced. Those two applicants were rejected as they did not demonstrate on their applications, or in one case, on appeal, that they possessed at least three years of *applicable* experience. However, similar to Salvo, Agency Services did find that their Master's degrees *were applicable*.

Pertaining to Mughis-Sohrawardy's contentions regarding her bypass, *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 (known as the Rule of Three) allow an appointing authority to select any of the top three interested eligibles from a promotional list, provided that a veteran does not head the list. As long as that discretion is properly utilized, an appointing authority's discretion will not be overturned.

N.J.A.C. 4A:2-1.4(c) provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper.

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 retaliation by a preponderance of the evidence. Once a *prima facie* case showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-retaliatory reason for the decision. For the reasons set forth below, the appellant has not presented a *prima facie* in this matter.

Mughis-Sohrawardy contends that she is more qualified than Salvo who was the lower-ranked candidate on the PS161588 certification. However, the appointing authority provided a legitimate basis for not selecting her based on its interviews. In this regard, it is within an appointing authority's discretion to choose its selection method. Appointing authorities are permitted to develop and utilize objective standards in order to determine how to use that discretion. The use of a panel of interviewers familiar with the position is a permissible way for the appointing authority to make a hiring decision, so long as that hiring decision is in compliance with *N.J.A.C. 4A:4-4.8(a)3*. See *In the Matter of Paul Mikolas* (MSB, decided August 11, 2004) (Structured interview utilized by appointing authority that resulted in the bypass of a higher ranked eligible was not in violation of the Rule of Three). In this matter, the appointing authority conducted interviews with the candidates and they were provided with the opportunity to respond. The record indicates that the appointing authority then selected the two candidates it determined were best suited for the position. While Mughis-Sohrawardy may disagree with this methodology, she has not established that it was improperly implemented or that her non-selection via this process was for an improper or impermissible reason.

Moreover, while Mughis-Sohrawardy contends she has greater education than Salvo, she has not established in any way that such education makes her more qualified to serve as an Environmental Scientist 2, Water Resources. With respect to the contention that the Salvo's education does not qualify him to perform the scientific duties of an Environmental Scientist 2, Water Resources, that argument is of no moment. Given his experience as an Environmental Specialist 3, Salvo clearly possessed sufficient applicable experience to be considered eligible for the position. Moreover, so long as he met the eligibility criteria, and his appointment was not in violation of any Civil Service law or rules, his performance in the position is not appropriate for review by the Commission at this time. Rather, actual performance in a position is evaluated by the appointing authority during an appointee's Working Test Period and then beyond via performance evaluations. Further, the mere possession of advanced education credentials is insufficient evidence that the appointing authority's selection discretion was abused without showing a direct nexus between the credentials and the position in question. Additionally, while Mughis-Sohrawardy ranked higher on the eligible list based on an evaluation of her combined education and experience, that fact, by itself, is insufficient to establish that her bypass was improper given the discretion afforded an appointing authority under the Rule of Three. Moreover, the mere fact that one of the individual's involved in the interview process provided a letter of recommendation in this matter does not establish that there was any impermissible bias or that the appointing authority abused its discretion in its selection of Salvo. Accordingly, Mughis-Sohrawardy has not sustained her burden of proof in this matter with respect to her bypass.

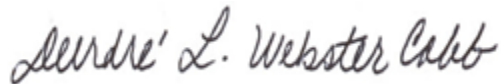
Finally, with respect to Mughis-Sohrawardy's claims of discrimination, other than her assertions in this matter, she has not presented any substantive evidence in support of her claims to show that she was discriminated against. Additionally, her complaint of alleged violations of the New Jersey State Policy Against Discrimination in the Workplace (State Policy) filed with the appointing authority pertaining to her bypass is still pending. As such, the Commission cannot now address the alleged State Policy claims within the context of this matter. Rather, any discrimination claims pertaining to her bypass in this matter must be addressed as a part of her separate State Policy complaint. Nonetheless, upon receipt of the appointing authority's determination of her aforementioned complaint, if she disagrees with the determination, the appellant may file a separate appeal with this agency pertaining to the State Policy matter. *See N.J.A.C. 4A:7-3.2.*

ORDER

Therefore, it is ordered that these appeals 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 27th DAY OF MARCH, 2018



Deirdre L. Webster Cobb
Acting Chair
Civil Service Commission

Inquiries
and
Correspondence

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

c: Nazia Mughis-Sohrawardy
Changi Wu
Brian Salvo
Deni Gaskill
Kelly Glenn