



B-17

STATE OF NEW JERSEY

In the Matter of Janie Reid, Police  
Lieutenant (PM5014M), East Orange

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-1470

Bypass Appeal

ISSUED: APR - 2 2015 (CSM)

Janie Reid appeals the bypass of her name on the Police Lieutenant (PM5014M), East Orange eligible list.

The appellant, a non-veteran, took the subject promotional examination, achieved a passing score, and was ranked on the resultant eligible list. The appellant's name was certified to the appointing authority on June 21, 2013. In disposing of the certification, the appointing authority bypassed the appellant, who was listed in the first position on the PL130704 certification, and appointed the eligibles in the second and third positions. The appellant appealed the matter of her bypass to the former Division of Classification and Personnel Management (CPM)<sup>1</sup> arguing that the appointing authority improperly bypassed her name in favor of a lower ranked candidate. CPM determined that the appointing authority disposed of the certification in accordance with the Rule of Three.

On appeal, the appellant states that she was bypassed due to ongoing harassment by the Chief of Police, William Robinson. The appellant provides copies of letters she submitted to the appointing authority's Human Resource Services Department alleging harassment and a hostile work environment dating back to March 2002. In these documents, the appellant claims that she was suspended and ordered to relinquish her service revolver on September 11, 2012 due to an active domestic violence restraining order and was served with a notice that she was being indefinitely suspended on November 20, 2012, five days after the final restraining

<sup>1</sup> Now the Division of Agency Services.

order was vacated on November 15, 2012. The appellant claims that other, primarily male officers, have had domestic violence restraining orders against them, but they were not subjected to the same level of reprimand. Further, she asserts that she was suspended for eight days prior to the first certification of the subject list and her return to work after a subsequent 120-day suspension was delayed by seven days in order to prevent her from being considered for a subsequent appointment from the list. The appellant maintains that these actions were done at the behest of the Police Chief in order to prevent her from being considered for the rank of Police Lieutenant.

In response, the appointing authority, represented by Khalifah L. Shabazz, Corporation Counsel, states that the appellant has provided no evidence that the complaints she lodged against the Police Chief were the motivation behind its decision to bypass her. Rather, the appointing authority presents that the appellant was not available for the interview process because she was on suspension for a disciplinary issue, which ultimately led to a settlement agreement imposing a 120-day suspension. Additionally, the appointing authority indicated that it relied on supervisory performance, disciplinary history and an in-depth interview with each candidate and it was determined that the eligibles in the second and third position were most suitable.

### 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. *N.J.A.C. 4A:2-1.4(c)*, in conjunction with *N.J.A.C. 4A:4-4.8(b)4*, provides that the appellant has the burden of proof to show by a preponderance of evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper. As long as that discretion is properly utilized, an appointing authority's decision will not be overturned.

Initially, since the appellant, a non-veteran, headed the certification, it was within the appointing authority's discretion to select any of the top three eligibles remaining on the certification. The appellant, the first-ranked eligible, was bypassed on the June 21, 2013 certification of the eligible list in favor of the eligibles ranked 2<sup>nd</sup> and 3<sup>rd</sup>. The appointing authority indicated that it selected lower-ranked eligibles because the appellant was not available to be interviewed as she was suspended and the other eligibles were better suited for the position. The appellant challenges the appointing authority's proffered reasons, and asserts, among other things, that she was bypassed as a result of her filing a complaint regarding ongoing workplace harassment and disparate treatment.

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* 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.

The appellant has not established that her bypass was the result of her filing a complaint concerning workplace harassment. Rather, the record establishes that, as a result of a settlement agreement, the appellant was suspended for 120 working days at the time the list was certified. While the appellant claims that the suspensions were timed so she would not be available for appointment consideration, she has not provided one scintilla of evidence to support this contention. Moreover, it is permissible for an appointing authority to consider an individual's pending discipline as a basis for bypassing that individual on a certification. See *In the Matter of Michael Cervino* (MSB, decided June 9, 2004). See also, *In the Matter of Gary R. Kern, et al.* (MSB, decided October 11, 2000) (It was determined that appellant was not entitled to retroactive date of appointment, nor were Civil Service law or rules violated, when the appointing authority initially bypassed him due to pending disciplinary charges that were departmentally dismissed); *In the Matter of Michael Boylan* (MSB, decided October 22, 2003) (It was within the appointing authority's discretion to bypass appellant due to two discrimination complaints filed against him, which were transmitted to the OAL for a hearing and which might have resulted in disciplinary charges).

Additionally, the 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). Other than her mere allegations, the appellant has not presented any substantive evidence regarding her 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 which have not been persuasively refuted.

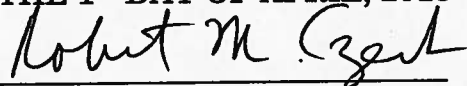
Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name was proper and the appellant has failed to meet her burden of proof in this matter.

**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 1<sup>ST</sup> DAY OF APRIL, 2015**



**Robert M. Czech  
Chairperson  
Civil Service Commission**

<b>Inquiries and Correspondence</b>	<b>Henry Maurer Director Division of Appeals &amp; Regulatory Affairs Civil Service Commission Written Record Appeals Unit P.O. Box 312 Trenton, New Jersey 08625-0312</b>
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**c: Janie Reid  
Khalifah Shabazz, Corporation Counsel  
Kenneth Connolly  
Joseph Gambino**



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION

DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

Robert M. Czech  
Chair/Chief Executive Officer

November 22, 2013

Ms. Janie Reid

**Title:** Police Lieut  
**Symbol:** PM5014M  
**Jurisdiction:** East Orange  
**Certification Number:** PL130704  
**Certification Date:** 6/21/13

**Initial Determination:**— Bypassed

This is in response to your correspondence, contesting the bypass of your name, on the referenced certification list.

The Appointing Authority disposed of the referenced certification indicating the selection of a lower ranked eligible, and bypassed your name in accordance with N.J.A.C.4A: 4-4.8, which permits the appointing authority to make an appointment, from among the three highest ranked eligibles, according to the (Rule of Three). This rule is subject to the statutes governing veteran's preference when applicable.

It should be noted that effective May 7, 2012, a portion of N.J.A.C.4A:4-4.8 was repealed and the Appointing Authority is no longer required to provide a statement of reason when a lower or tied rank appointee is selected.

After a thorough review of our records and all the relevant material submitted, we find that no Merit System Rules were violated in disposing of the certification. Therefore, the Appointing Authority's decision to bypass your name has been sustained and your appeal is denied. Please be advised that your name remains active on symbol PM5014M, and will be considered for future certifications until this list expires. The eligible list expires on February 2, 2014.

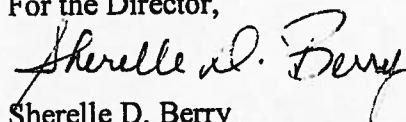
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs within 20 days of the receipt of this letter. You must submit all proofs, arguments, and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with

established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director  
Division of Appeals and Regulatory Affairs  
Written Appeals Record Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Director,

  
Sherelle D. Berry  
Human Resource Consultant 2

c: AA