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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Reggie Dalton, Police
Captain (PM0866S), Lakewood
Township

CSC Docket No. 2017-594

List Bypass Appeal

ISSUED: APR - 5 2017 (WR)

Reggie Dalton appeals the bypass of his name on the Police Captain (PM0866S), Lakewood Township, eligible list.

The appellant, a nonveteran, appeared on the subject eligible list, which promulgated on March 26, 2015 and expires on March 25, 2018. A certification containing four names was issued to the appointing authority on July 13, 2016. The appellant appeared as the third-ranked eligible on the certification. In disposing of the certification, the appointing authority appointed the first, second and fourth-ranked eligibles, effective July 13, 2016, and bypassed the appellant.

On appeal to the Civil Service Commission (Commission), the appellant states that the appointing authority initially told him he was bypassed because it wanted to "have a police officer of a higher rank in the position of internal affairs supervisor so there would be no issues with said officer conducting investigations of officers holding the rank of lieutenant and lower ranks." In this regard, the appellant summarizes his experience and achievements throughout his 23-year career in law enforcement with the appointing authority and also his education and training.

The appellant alleges that he was wrongfully disciplined for abusing sick leave and contends that certain employees of the appointing authority lied about him under the direction of Chief Robert Lawson during an investigation and destroyed evidence. He also contends that Chief Lawson ordered him to undergo a Fitness for Duty Evaluation in 2013 and contends that he was never provided with

documents from the evaluation that he requested nor was he given a meeting to discuss the results or possible discipline. The appellant further states that the following be considered: in 2002, he reported to a former Chief that another officer had ordered other officers to violate people's civil rights and, as a result, a person's civil rights were violated. He also alleges that his civil rights were violated after he found a tracking device in a department vehicle that he alone operated.

In response, the appointing authority, represented by Steven Secare, Esq., argues that the appellant was bypassed, among other things, because of an "extensive disciplinary record which dates back over 13 years" and includes a total of 62 days of suspensions. Moreover, the appointing authority states that the fourth-ranked eligible "has an exemplary record," "has the most seniority" and is well-qualified for the position. Accordingly, the appointing authority contends that the appellant's appeal should be denied.

The appellant responds that the appointing authority has changed its justification for his bypass from wanting to appoint a higher-ranking officer to his disciplinary record. The appellant alleges that his disciplinary record is due to retaliation by Chief Lawson for his 2002 reporting of civil rights violations. The appellant adds that he was wrongfully disciplined in 2009 for receiving compensation for performing official work from a source other than the appointing authority, and again in 2009 for failing to arrest a person illegally in possession of a BB gun. Accordingly, the appellant requests that his appeal be granted.

It is noted that the appellant's County and Municipal Personnel System record only indicates that he served a 16-day suspension in 2010.

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 the evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper.

A review of the record indicates that the appellant has not shown by a preponderance of the evidence that the decision to bypass his name for appointment was improper. On appeal, the appellant has not disputed the appointing authority's reasons for bypassing him, *i.e.* his lengthy disciplinary history, but rather asserts that he is the victim of a vindictive supervisor. However, the appellant offers no evidence, *e.g.*, documents or sworn statements to support his allegations. Moreover, the fact remains that he was subject to major discipline in 2010, some five years before the relevant eligible list promulgated. This fact alone provides a legitimate

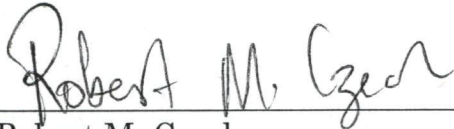
basis for his bypass. See *In the Matter of Paul DeMarco* (CSC, decided April 6, 2005); *In the Matter of Sherree K. Culvert, Correction Lieutenant, Department of Corrections (PS6320I)* (MSB, decided October 11, 2000) (Sufficient basis for bypass on Correction Lieutenant list for employee with 20 minor disciplinary infractions, including three very recent infractions). Finally, it is noted that 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). Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the Police Captain (PM0866S), Lakewood Township, eligible list, was proper and the appellant has failed to meet 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 APRIL, 2017



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