



B-7

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Chirag Patel,
Accountant (C0737S), Hudson
County

CSC Docket No. 2016-1573

List Bypass Appeal

ISSUED: JUN 09 2017 (SLK)

Chirag Patel appeals the bypass of his name on the Accountant (C0737S), Hudson County eligible list.

By way of background, on July 13, 2015 the subject list was certified (OL150873) and the appellant was listed in the 1st position. The appellant and the eligible in the 3rd position were bypassed, the eligible in the 2nd position was appointed, the eligibles in 4th, 6th, and 8th positions were not reachable, and the eligibles in the 5th and 7th positions were removed.

On appeal, the appellant presents that he has a Bachelor's degree in Accounting, is a Certified Public Accountant, and has been working as an accountant for more than eight years. The appellant submits positive references that were provided to the appointing authority after his interview. He believes that the appointee was hired provisionally and then permanently due to his political or family connections and not based on his skills or qualifications. The appellant claims that the appointing authority provided the appointee the test questions and answers in advance of the examination and therefore requests that the appointee re-take the examination without interference. He contends that the appointing authority discriminated against him because he is East Indian and a minority.

¹ The eligible in the 7th position was restored to the list on appeal.

In response, the appointing authority submits an email concerning the appellant's interview, which notes that the appellant is a CPA, and states that his professional experience had been dedicated to individual tax returns and statements and his experience would be better suited in the preparation of taxes for individuals.

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)3i allow an appointing authority to select any of the top three interested eligibles on an open competitive list provided no veteran heads the list. Additionally, *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 from 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 action 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 outlined the burden of proof necessary to establish discriminatory and/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 motive. In a case such as this, where the adverse action is failure to promote, the employer has the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.

In the instant matter, the appellant was in the 1st position on the subject certification. However, it was within the appointing authority's discretion to select any of the top three eligibles for each appointment. Nevertheless, the appellant alleges that he was bypassed for improper reasons. Specifically, the appellant contends that he was bypassed because he is East Indian and a minority and due to the appointee's political or family connections. The appellant also accuses the appointing authority of helping the appointee cheat on the test. However, other

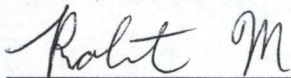
than his mere allegations, the appellant has not presented any substantive evidence regarding his bypass that would lead the Civil Service Commission (Commission) to conclude that the bypass was improper or an abuse of the appointing authority's discretion under the "rule of three." *Compare, In re Crowley*, 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). Additionally, the appointing authority has presented a valid business reason for bypassing the appellant, namely, that it deemed his experience as best fit for working on individual tax returns. Further, contrary to the appellant's allegation that the appointee was unqualified and unskilled, a review of the appointee's application reveals that he possesses a Bachelor's degree in Accounting, a Master's Degree in Taxation, and was a CPA although he has not kept his license active. Additionally, the appointee has been working as an accountant since 1974, mostly with some of the largest accounting firms and corporations in the world. Thus, the Commission finds that the appellant did not meet his initial burden of establishing a *prima facie* case of national origin or ethnic discrimination or improper political motivation or nepotism by a preponderance of the evidence.

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 7th DAY OF JUNE, 2017



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