



time. Moreover, the appellant states that the appointing authority indicated to her that its hiring decisions are not based on candidate interviews.

In response, the appointing authority asserts that the appellant was not authorized on leave at the time when the April 26, 2019 list was certified or at the time the candidate was appointed. The appointing authority adds that it conducted interviews and reachable candidates with the highest interview scores were appointed from the September 7, 2017 and the April 26, 2019 certifications. The appointing authority explains that the appointments did not involve the appellant's use of sick leave, but rather, the appellant did not score as high as the appointed candidates during her interview.

It is noted that the appellant does not provide any further arguments or information in support of her appeal.

### 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)3 allow an appointing authority to select any of the top three interested eligibles, provided that disabled veterans and then veterans shall be appointed in their order of ranking from an promotional list. Additionally, in *In the Matter Nicholas R. Foglio, Fire Fighter (M2246D), Ocean City*, 207 *N.J.* 38 (2011), the Supreme Court held that, as bypassing a higher-ranked eligible is facially inconsistent with the principles of merit and fitness, the appointing authority must justify its selection of a lower-ranked eligible with a specific reason. Finally, *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 a eligible list was improper.

Initially, with respect to the appellant's claims pertaining to the September 7, 2017 certification, this agency's records do not reflect that the appellant submitted an appeal of that matter within 20 days of the date she was bypassed from that list. The appellant's arguments with respect to the September 7, 2017 certification were submitted in the instant appeal which was received by this agency on July 30, 2019. Since the appellant did not previously submit an appeal regarding the September 7, 2017 certification within the proper timeframe, her arguments in that regard are untimely and will not be addressed in this matter. Moreover, there is no substantive basis in this particular case to extend or to relax the time for an appeal of that matter. *See N.J.A.C.* 4A:1-1.2(c).<sup>2</sup>

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<sup>2</sup> Regardless, with respect to the September 7, 2017 certification, the appointing authority maintains that it appointed the candidates from the September 7, 2017 list based on their higher interview scores, which the appellant does not substantially refute in this matter.

Although the appellant argues that favoritism and use of leave time resulted in her bypass, she did not provide any substantive arguments in support of her claims, nor did she show that she scored higher than the other candidates at the time of her interview. Appointing authorities are permitted to interview candidates and, so long as the candidate is reachable on the certification, base its hiring decision on the interview. This is within the appointing authority's discretion and may apply to all positions, including Family Service Specialist 1. The use of interviews with the assignment of numerical scores in a number of categories related to the position is a permissible way for an appointing authority to make a hiring decision. *See e.g., In the Matter of Wayne Rocco, Docket No. A-2573-05T1* (App. Division April 9, 2007) (Appellate Division that it was appropriate for an appointing authority to utilize an oral examination/interview process when selecting candidates for promotion); *In the Matter of Paul Mikolas* (MSB, decided August 11, 2004) (Structured interview utilized by appointing authority that resulted in bypass of a higher ranked eligible was based on the objective assessment of candidates' qualifications and not in violation of the Rule of Three). Although the appellant may disagree with this method, so long as the hiring decision is in compliance with *N.J.A.C. 4A:4-4.8(a)3i*, the Commission cannot find that the interview was inappropriately conducted.

Additionally, in a case 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/or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination 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 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 intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the discriminatory motive. In a case such as this, where the adverse action is failure to appoint, the employer has the burden of showing, by a preponderance of the evidence, that other candidates had better qualifications than the appellant.

A review of the record in the instant matter indicates that the appellant has failed to meet her burden of proof in this matter. The appellant has not shown by a

preponderance of the evidence that the decision to bypass her name on the April 26, 2019 certification was improper. The appointing authority has provided specific reasons for bypassing her name for appointment, namely, that the appointed candidate interviewed and scored higher than the appellant at the time of the interview. While the appellant argues that she is equally or more qualified and makes other nebulous claims, she has not demonstrated that the appointing authority's proffered reasons were not factual or pretextual.

Accordingly, a thorough review of the record indicates that the appointing authority's bypass of the appellant's name on the April 26, 2019 certification of the Family Service Specialist 1 (PS2267K), Department of Children and Families, eligible list 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 15<sup>TH</sup> DAY OF APRIL , 2020

*Deirdre L. Webster Cobb*

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Deirdre Webster Cobb  
Chairperson  
Civil Service Commission

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