



STATE OF NEW JERSEY

In the Matter of Carlos Arocho,
Fire Fighter (M2554M), Newark

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2020-2221

Request for Reconsideration

ISSUED: MAY 22, 2020 (SLK)

Carlos Arocho, represented by Bette R. Grayson, Esq., requests reconsideration of *In the Matter of Carlos Arocho* (CSC, decided January 29, 2020) where the Civil Service Commission (Commission) granted his appeal that his name should not have been removed from the subject list but ordered that his name on certification OL151503 be recorded as bypassed.

By way of background, the Arocho's name was removed from the Fire Fighter (M2554M), Newark, eligible list on the basis of falsification of his application. However, the Commission noted that the certification was originally returned as indicating that Arocho had an unsatisfactory background and a review of the file did not clearly explain why the reason for his removal was changed to falsification. Specifically, a review of the information that the appointing authority submitted to the Division of Agency Services (Agency Services) indicated that it requested to remove the Arocho's name from the list because he was arrested on multiple occasions and charged with various violations, and found guilty of Simple Assault in January 2002. Moreover, a review of his Certified Driver Abstract indicated numerous Motor Vehicle violations including a history of having his driver's license suspended.

In its decision, the Commission indicated that Arocho explained the circumstances behind his responses on the employment application, which had not been refuted by the appointing authority. Further, he had been employed by the appointing authority for many years, putting it in the unique position to be

intimately familiar with his background. With this in mind, the Commission found that the fact that the appointing authority did not respond to refute his assertions on appeal was significant. Therefore, taking into consideration that Arocho's last conviction was for Simple Assault in January 2002 and the appointing authority did not respond to his appeal, the Commission found that there was an insufficient basis to remove his name from list on the basis of an unsatisfactory criminal background. However, the Commission noted that a review of the certification indicated that one individual was recorded as bypassed and it was mindful of the high standards that are placed upon Fire Fighters. *See Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998). Therefore, the Commission determined that Arocho's background provide a basis for which the appointing authority could bypass him on certification OL151503 without creating a "Rule of Three" violation.

On reconsideration, Arocho argues that the Commission committed a material error by determining that his name be recorded as bypassed on the subject certification. Arocho asserts that an appointing authority is not permitted to bypass a candidate's name without providing a legitimate reason for the bypass. *See In the Matter of Nicholas R. Foglio*, 207 N.J. 38 (2011). Further, the appointing authority in not permitted to simply provide "boilerplate," statements that "do[oes] not explain the selection process or otherwise assure that the bypass of a higher-ranked candidate was not arbitrary." *Id.* at 49.

Arocho argues that by the appointing authority simply stating that his "history" caused him to be bypassed by lower-ranked candidates does not satisfy the standard in *Foglio*. In fact, he presents that the appointing authority did not submit any additional reason or even proffer any argument regarding this issue other than what was already submitted. He argues that he is entitled, at minimum, to a detailed explanation from the appointing authority indicating what specifically in his "history," and the history or the qualifications of the other candidates that led to this conclusion.

It is noted that since the appointing authority did not respond to the initial appeal and it was the Commission, not the appointing authority, which determined that Arocho's name should be recorded as bypassed on the subject certification, no response to the current matter from the appointing authority was solicited.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original

proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or

2. That a clear material error has occurred.

N.J.A.C. 4A:2-1.4(c) provides that the appellant has the burden of proof.

In this matter, Arocho failed to meet the standard for reconsideration as a clear material error has not occurred. In fact, his reliance on *Foglio* is misplaced as *Foglio* only involves the appointing authority's responsibility when it chooses to bypass a candidate.¹ However, in this case, it was the Commission, not the appointing authority, that determined that Arocho's name should be bypassed. As such, the appointing authority had no obligation to proffer a reason for the bypass in response to Arocho's to the Commission's restoration of his name on the list. Moreover, contrary to Arocho's statement that he was bypassed for "boilerplate" reasons based on his "history," the Commission noted that the background that the appointing authority provided to Agency Services was sufficient for the bypass. Specifically, the appointing authority indicated that Arocho was arrested on multiple occasions and charged with various violations. Further, he had been found guilty of Simple Assault in January 2002. Moreover, a review of his Certified Driver Abstract indicated numerous Motor Vehicle violations including a history of having his driver's license suspended. It is noted that Arocho did not dispute this background in the initial appeal or on reconsideration. Additionally, the Commission noted that as there had been only one name on the subject certification that had been bypassed, the appointing authority could have chosen to bypass Arocho under the "Rule of Three." See *N.J.A.C.* 4A:4-4.8(a)3. Furthermore, if the appointing authority had originally chosen to bypass Arocho and had submitted the above background to justify that decision upon his appeal, it would have been deemed sufficient. Finally, consistent with the "Rule of Three," an appointing authority has selection discretion to appoint a lower ranked eligible absent any unlawful motive. See *In the Matter of Michael Cervino* (MSB, decided June 9, 2004). Consequently, absent some evidence of invidious or unlawful motivation by the appointing authority in making its initial decision to remove Arocho's name from the list, or some substantive challenge for the sufficiency of the Commission's bypass his name, neither of which he has provided, Arocho has not satisfied his burden of proof.

ORDER

Therefore, it is ordered that reconsideration be denied.

¹ Moreover, the requirement that a statement of reasons be provided in support of an initial bypass is no longer required under *N.J.A.C.* 4A:4-4.8. Such reasons are **only** required when an eligible is initially bypassed on a list by an appointing authority and appeals that bypass to the Commission. As discussed, that is not what occurred in this matter.

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
20TH DAY OF MAY, 2020

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