

COMMONWEALTH OF PENNSYLVANIA

Sean Donahue : State Civil Service Commission
 :
 v. :
 :
 Schuylkill County Assistance Office, :
 Department of Human Services : Appeal No. 31064

Sean Donahue : Peter J. Garcia
Pro Se : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Sean Donahue challenging his non-selection for appointment to Income Maintenance Caseworker (R-2022-40248-44720) employment with the Schuylkill County Assistance Office, Department of Human Services. Hearings were held on September 6, 2023, and January 4, 2024, via video, before Chairwoman Maria P. Donatucci.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether appellant established his non-selection for appointment to Income Maintenance Caseworker employment was motivated by discrimination.

FINDINGS OF FACT

1. By email dated January 26, 2023, appellant was informed he did not meet the county residency requirement for Income Maintenance Caseworker position in the Schuylkill County Assistance Office. Comm. Ex. A; N.T. pp. 48, 236-237; Ap. Exs. 11, 401.2 (p. 1).
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018. Comm. Exs. C, D, F.
3. On December 22, 2022, the Income Maintenance Caseworker (R-2022-4048-44720) job vacancy was posted. N.T. p. 487; Ap. Ex. 21.1.
4. The job posting's qualifications reflect the appointing authority requested a county preference restriction: "hiring preference for this vacancy will be given to candidates who live within Schuylkill County. If no eligible candidates who live Schuylkill County apply for this position, candidates who reside in other counties may be considered." N.T. pp. 198, 502; Ap. Ex. 21.1 (p. 3).

5. The appointing authority requested the following recruitment options: Code 11, Code 12, Code 14, Code 17, Code 22, and county preference. N.T. pp. 142, 145-146, 150, 198, 401-402; AA Ex. 1.
6. The Code 11 recruitment list comprises all candidates that have been deemed eligible and who could be referred to the job requisition. N.T. p. 165, 341, 402; Ap. Ex. 401.0; AA Ex. 1 (p. 1).
7. The Code 12 recruitment certification lists candidates who are currently employees for the agency that is submitting the job requisition and has the job vacancy. N.T. pp. 186, 198, 324, 404.
8. The Code 14 recruitment certification lists candidates who are currently civil service employees for another government agency within the Commonwealth. N.T. pp. 186, 324-325.
9. The Code 22 recruitment certification is also known as the veterans' preference certification. N.T. pp. 161, 319.

10. The appointing authority requested the Office of Administration create a special recruitment option for the employees of White Haven Center and Polk Center. N.T. pp. 405, 500.
11. The White Haven Center and Polk Center were pending closure and the appointing authority employees were to be furloughed. N.T. pp. 121, 145, 249-250, 251, 260, 263, 325, 406, 409, 439, 491.
12. The appointing authority decided to create a special recruitment option in order to provide its employees an opportunity to remain with the Commonwealth. N.T. pp. 264, 491.
13. The Office of Administration approved and directed the creation of the Code 17 recruitment option and list. N.T. p. 500.
14. Appellant applied for the Income Maintenance Caseworker (R-2022-40248-44720) position. N.T. pp. 34, 270, 320.
15. Appellant is an out-of-county veteran candidate. N.T. p. 62.

16. All Code 17 candidates, including Morrison, Yefchak, and Pinto, were out-of-county candidates. N.T. pp. 153, 209-210, 320, 497-498.
17. On January 23, 2023, a referral list (hereinafter “initial referral list”) was generated after all candidates applied for the position. N.T. pp. 243, 320, 343; Ap. Ex. 401.0; AA Ex. 3.
18. The initial referral list contained fifty-nine candidates referred to the appointing authority to schedule interviews for the position. The list included in-county and out-of-county candidates, who received an exam score, and met the position’s minimum experience and training requirements. N.T. pp. 269, 308-309, 391-392; Ap. Ex. 401.0
19. Human Resource Analyst 2 Mary Greco sent self-scheduling emails to all fifty-nine candidates, including appellant, to schedule their interviews. N.T. pp. 124, 125-126; Ap. Ex. 401.0; AA Ex. 3.
20. On January 25, 2023, appellant received a self-scheduling email inviting him to schedule an interview. N.T. pp. 35-36, 48; Ap. Exs. 401.2 (p. 2), 702 (p. 1).

21. On January 25, 2023, Greco discovered the initial referral list was erroneously compiled because it did not filter the county preference recruitment option. N.T. pp. 118, 119-120, 121, 343, 502; Ap. Ex. 702 (p. 1).
22. Greco did not notice the initial referral list was erroneous until out-of-county veterans were scheduling their interviews for the position. N.T. pp. 148, 192.
23. In order to prevent any further erroneous interviews being scheduled, Greco shut down the self-scheduling program. N.T. pp. 37, 122.
24. On January 25, 2023, at 1:48 p.m., appellant could not schedule an interview and informed the appointing authority of his inability to schedule an interview. N.T. pp. 36, 40, 44, 46; Ap. Ex. 702.
25. After shutting down the self-scheduling program, Greco informed Human Resource Analyst 1 Tracey Davis, who was the assigned analyst for the Income Maintenance Caseworker position. N.T. pp. 122, 129-130; Ap. Ex. 302.31.

26. Davis contacted her supervisor, and it was decided to send notices to all out-of-county candidates informing them of the Schuylkill County preference. N.T. p. 229.
27. After notices were sent to out-of-county candidates, they were moved to referred status until after the posting deadline expired. N.T. p. 231; Ap. Ex. 301.4.
28. Human Resource Analyst 3 Joel Cortes was responsible for amending the initial referral list in order to filter Schuylkill County preference. N.T. pp.171, 336-337, 342; Ap. Exs. 401.2, 804.4.
29. On February 2, 2023, Cortes applied the county preference filter to the referral list reducing the list by twenty candidates, including appellant and the Code 17 candidates, which were previously referred. N.T. pp. 171, 342, 344, 347, 414, 419, 446, 462; Ap. Exs. 401.2, 804.4.
30. After amending the initial referral list, Cortes received an instruction to include the Code 17 candidates. N.T. pp. 161-163, 345, 414, 419, 446-447, 462; Ap. Ex. 301.4.

31. On February 3, 2023, Cortes amended the referral list by adding the Code 17 candidates for referral for interviews. N.T. pp. 170, 171-172, 344; Ap. Exs. 402.1, 804.4.
32. On February 22, 2023, the referral list was formally amended and corrected (hereinafter “amended referral list”). N.T. p. 157.
33. The amended referral list referred forty-two candidates. N.T. pp. 449, 466.
34. Thirty-nine candidates were from Schuylkill County. N.T. pp. 449, 466.
35. Three Code 17 candidates, Morrison, Yefchak, and Pinto were included in the amended referral list. N.T. pp. 38-39, 51, 64-66, 83-85, 87, 165, 181, 204, 449, 453-454, 466; Ap. Exs. 302.3, 302.4.
36. Code 17 candidate Morrison did not self-schedule an interview and was not selected to fill the Income Maintenance Caseworker position. N.T. pp. 352, 471, 477-478; Ap. Exs. 401.0, 804.4

37. Code 17 candidate Yefchak scheduled an interview, participated in an interview on February 3, 2023, but was not selected to fill the Income Maintenance Caseworker position. N.T. pp. 363-364, 471; Ap. Exs. 401.01, 804.3.

38. Code 17 candidate Pinto scheduled an interview, participated in an interview on February 3, 2023, but was not selected to fill the Income Maintenance Caseworker position. N.T. pp. 363-364, 472; Ap. Ex. 401.0, 804.3.

39. At the conclusion of the hiring process, Schuylkill County candidates Danielle Schwarz and Kathleen Yourey were selected and subsequently hired to fill the Income Maintenance Caseworker position. N.T. pp. 353-354, 492; Ap. Ex. 804.4.

DISCUSSION

The issue in the present appeal is whether appellant established his non-selection for appointment to Income Maintenance Caseworker (R-2022-40248-44720) employment with the appointing authority was motivated by discrimination. Specifically, appellant was not selected for the Income Maintenance Caseworker position because after the appointing authority reviewed his background information, it determined appellant did not meet the county residency requirement,

as outlined in the job posting. Comm. Ex. A. Appellant alleges that his non-selection was motivated by disparate treatment, bias, technical discrimination in violation of veterans' preference, and waiver of county preference. Comm. Ex. B.

In an appeal alleging discrimination, the burden of presenting evidence in support of all allegations of discrimination lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991). Accordingly, the sole question for determination by this Commission is whether appellant has presented evidence sufficient to establish his claims of discrimination. Section 2704 of Act 71 of 2018 provides:

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, religion, disability or political, partisan or labor union affiliation or other non-merit factors.

71 Pa.C.S.A § 2704.¹ The prohibition set forth in this section encompasses two general types of discrimination. First, “traditional discrimination” encompasses claims of discrimination based on race, gender, religion, disability, political, partisan or labor union affiliation, or other non-merit factors; and second, “technical

¹ The provisions of Section 2704 are substantially the same as the provisions in Section 905.1 of Act 286 (71 P.S. § 741.905a), and both sections of the respective acts use virtually the same language. Section 905.1 provides:

Prohibition of Discrimination—No officer or employe[e] of the Commonwealth shall discriminate against any person in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of political or religious opinions or affiliations because of labor union affiliations or because of race, national origin or other non-merit factors.

1 P.S. § 741.905a.

discrimination” involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996), citing *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.2d 462 (1988). In the instant matter, this appeal involves claims of traditional and technical discrimination.

In support of his appeal, appellant testified on his own behalf and presented the testimony of Human Resource Analyst 2 Mary Greco,² Field Human Resource Officer 2 Janet Norton,³ Human Resource Analyst 1 Tracey Davis,⁴ and Human Resource Analyst 3 Joel Cortes.⁵ In response, the appointing authority presented the testimony of Income Maintenance Administrator 3 Nyamka Jones.⁶ The relevant underlying facts of this matter are not in dispute.

² Greco is employed by the Office of Administration, Executive Offices (hereinafter “OA”), as a Human Resource Analyst 2. N.T. p. 103. Greco is assigned in the field division for the Department of Human Services, Field Operations. Her responsibilities include overseeing five County Assistance Offices (hereinafter “CAO”). N.T. p. 104. Greco also assists in preparing the CAO’s interview packets and preparations. If a selection is made for a candidate to fill a job position, Greco notifies the intake unit of their selected candidate and updates their paperwork. N.T. p. 108. If the Bureau of Talent Acquisition sends a referral list, Greco must account for every candidate that was interviewed. If a candidate was on the referral list but not interviewed, then Greco must provide that documentation along with the selected candidate’s information to the intake unit. N.T. p. 108.

³ Norton is employed by the appointing authority as a Field Human Resource Officer 2. N.T. pp. 255-256. Norton was not the hiring manager for this job requisition. N.T. p. 259.

⁴ Tracey Davis is employed by OA as a Human Resource Analyst 1. N.T. p. 224. During the course of the Income Maintenance Caseworker recruitment process, she was a Human Resource Analyst 2. N.T. p. 225. Davis begins the recruitment process by entering the job vacancy requisition and then the job posting. N.T. p. 226. Once the evaluation team reviews the candidates’ applications, they send Davis the list of eligible candidates. N.T. p. 226. Davis was the listed hiring manager for the Income Maintenance Caseworker position and managed the requisition. N.T. p. 132.

⁵ Cortes is employed by OA as a Human Resource Analyst 3. N.T. p. 301. He is responsible for applying the requested recruitment filters and referring candidates to the appointing authority. N.T. pp. 394, 424, 506.

⁶ Jones is employed as the Executive Director for the appointing authority. Her official civil service classification is Income Maintenance Administrator 3. N.T. p. 486. Jones has over twenty years of experience with the appointing authority. N.T. p. 501.

This appeal involves an Income Maintenance Caseworker job vacancy for which a Schuylkill county preference restriction was selected for candidates. *See* Findings of Fact 3, 4. There is no dispute the appointing authority permitted out-of-county candidates, including appellant, to apply for the position. *See* Findings of Fact 14, 15, 16. Of the out-of-county candidates, there was a special recruitment list called Code 17 that permitted candidates from the appointing authority's Polk Center and White Haven Center who were to be furloughed to apply.⁷ *See* Findings of Fact 10, 11, 12, 13.

There is no dispute the first referral list (hereinafter "initial referral list") included both in-county and out-of-county candidates. *See* Findings of Fact 17, 18. Every referred candidate from the initial referral list, including appellant, received self-scheduling emails to schedule their interviews. *See* Findings of Fact 19, 20. However, it is undisputed the initial referral list erroneously included out-of-county candidates, including appellant, because the county preference filter was not applied. *See* Findings of Fact 21, 21. In response, the appointing authority disabled the candidates' ability to self-schedule their interviews until the referral list was corrected.⁸ *See* Findings of Fact 21, 22, 23, 24.

It is undisputed the appointing authority corrected the initial referral list by applying the county preference filter, which removed all out-of-county candidates, including appellant and the Code 17 candidates. *See* Findings of Fact

⁷ The Code 17 list was created before the Polk Center and White Haven Center employees were furloughed. N.T. p. 327.

⁸ Out-of-county candidates who scheduled an interview before the initial referral list's error was caught had their interviews cancelled and notices were sent informing them of their ineligibility. N.T. p. 139.

28, 29. However, during the correction of the referral list, the Human Resource Analyst responsible for amending the initial referral list received an instruction to include the Code 17 candidates for referral and interviews.⁹ After the inclusion of the Code 17 candidates, the amended referral list was complete. *See* Findings of Fact 30, 31, 32, 35. There is no dispute three Code 17 candidates received opportunities to schedule and receive interviews for the position, but none were selected. *See* Findings of Fact 36, 37, 38. At the conclusion of the hiring process, the appointing authority selected in-county candidates to fill the Income Maintenance Caseworker position. *See* Finding of Fact 39.

We now turn to appellant's traditional and technical discrimination claims on appeal. The Commission will first address appellant's traditional discrimination claims of disparate treatment and bias.

In analyzing claims of traditional discrimination under Section 2704 of the Act, appellant has the burden of establishing a *prima facie* case of discrimination by producing sufficient evidence, if believed and otherwise unexplained, indicates that more likely than not discrimination has occurred. 71 Pa.C.S.A. § 2704; *Department of Health v. Nwogwugwu*, 141 Pa. Commw. 33, 38, 594 A.2d 847, 850

⁹ During these proceedings, there were various explanations as to why the Code 17 candidates were included in the amended referral, in addition to Cortes's instruction by Lisa Lukens, who is Davis's supervisor. Davis testified the Code 17 candidates' inclusion occurred because of an union agreement. N.T. pp. 233, 235, 246. Norton testified OA's Bureau of Talent Acquisition Office was responsible for the inclusion of the Code 17 candidates. N.T. p. 260. Greco believed the Code 17 candidates were given preference. N.T. p. 140. Meanwhile, Cortes testified he was not given instructions to give Code 17 candidates special status. N.T. p. 388. Despite these discrepancies in explaining the reasoning, the Commission notes there is corroborating testimony by Davis and Cortes that Lukens gave a direct instruction for the inclusion of the Code 17 candidates. Lukens was not present to testify during these proceedings. N.T. p. 161-163, 345, 414, 416, 419, 462.

(1991). The burden of establishing a *prima facie* case cannot be an onerous one. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989) *petition for allowance of appeal denied*, 524 Pa. 633, 574 A.2d 73 (1990).

Appellant alleges the appointing authority's decision to not select him for appointment to the Income Maintenance Caseworker position is motivated by disparate treatment. Appellant identified himself as an out-of-county veteran candidate. N.T. p. 62. Appellant initially argues the appointing authority only blocked out-of-county candidates from scheduling interviews when it discovered appellant was invited for an interview. N.T. pp. 38, 41. Then, after discovery, appellant learned the Code 17 candidates, Morrison, Yefchak, and Pinto were given the opportunity to schedule an interview for the Income Maintenance Caseworker position, while he was blocked. *See* Finding of Fact 35. Notably, appellant contended Pinto and Yefchak were from the same county as appellant but were offered the opportunity to interview for the position. N.T. p. 63; Ap. Ex. 302.3. Appellant contended he should have been included in the amended referral list as did the other three out-of-county candidates. N.T. p. 74.

In order to establish a disparate treatment claim, appellant must demonstrate that he was treated differently than others who were similarly situated. *Nwogwugwu*, 141 Pa. Commw. at 40, 594 A.2d at 851. Based upon appellant's argument, appellant established a *prima facie* case of disparate treatment. Notably, appellant, an out-of-county candidate was excluded from the hiring process for the Income Maintenance Caseworker position. However, three Code 17 candidates, who were also out-of-county candidates, were permitted to schedule and receive interviews for the position.

Once a *prima facie* case of discrimination has been established, the burden of production then shifts to the appointing authority to advance a legitimate non-discriminatory reason for the personnel action. If it does, the burden returns to appellant, who always retains the ultimate burden of persuasion, to demonstrate that the proffered merit reason for the personnel action is merely pretextual. *Henderson*, 126 Pa. Commw. at 614-615.

Having reviewed the record, the Commission finds appellant's non-selection for appointment to the Income Maintenance Caseworker position was not motivated by disparate treatment. When viewing appellant's candidate status as an out-of-county candidate and the three Code 17 candidates as out-of-county candidates, where the two Code 17 candidates who received interviews resided in the same county as appellant, it initially appears the candidates are similarly situated. However, the appointing authority presented legitimate non-discriminatory reasons in response. There is a distinct feature that distinguishes between appellant and the Code 17 candidates. Cortes, Norton, Greco, and Davis credibly explained the Code 17 candidates were appointing authority employees who were to be furloughed because of the Polk Center and White Haven Center imminent closures. *See* Findings of Fact 11, 13, 16. Because the Code 17 candidates were appointing authority employees, and appellant was a candidate attempting to enter Commonwealth employment, they are not similarly situated. As such, the appointing authority presented legitimate non-discriminatory reasons to support appellant's non-selection was not motivated by disparate treatment. Appellant has failed to offer evidence to prove these reasons were pretextual. *Nwogwugwu, supra*.

In support of his bias claim, appellant asserted that veterans, such as himself, were systematically removed from the hiring process. For instance, appellant compared himself to Zeidler who was also an out-of-county veteran but was not selected for an interview for the Income Maintenance Caseworker position because he did not meet the Schuylkill County preference. N.T. pp. 53-54; Ap. Ex. 401.10. Similarly, appellant explained Sauerzopf, Zeidler, and himself were on the initial referral list and were out-of-county veterans but ultimately were excluded from the hiring process. N.T. p. 62; Ap. Ex. 302.3.

Additionally, appellant argued every time he applied for the Income Maintenance Caseworker position, he continues to be left out of the hiring process. N.T. p. 42. Appellant emphasized his position that the civil service hiring system contains a general element of systematic discrimination where appellant is always being left out regardless of the fact that he scored highest among the candidates in the initial referral list. N.T. p. 61-62, 79; Ap. Ex. 302.3. Based upon appellant's presentation, appellant established a *prima facie* case of bias against himself as a veteran.

Nevertheless, the Commission finds appellant's non-selection from appointment to the Income Maintenance Caseworker position was not motivated by a veteran bias or an inherent bias against the appellant. The appointing authority presented legitimate non-discriminatory reasons emphasizing how there was no bias against appellant as a veteran or personally against appellant. Davis and Cortes credibly explained and appellant does not dispute the fact that the initial referral list erroneously included out-of-county candidates. *See* Finding of Fact 21.

Certifications for appointment or promotion may be limited to residents of a county or other administrative district. *See Donahue v. Office of Administration and PA Department of Human Services* (Pa. Commw. No. 295 M.D. 2021, filed November 30, 2021) (“The use of county residence restriction in hiring is authorized by the former Civil Service Act and the Commission’s regulations.”). Appellant’s veteran status or his own status as a candidate in the hiring process was not a dispositive factor in his exclusion. In fact, appellant’s non-selection resulted from Cortes applying the county preference filter to the referral list, which removed all out-of-county candidates, in order to properly filter the referral list through county preference. *See* Finding of Fact 29. As such, the appointing authority presented legitimate non-discriminatory reasons to support appellant’s non-selection was not motivated by bias. Appellant failed to offer evidence to prove these reasons were pretextual. *Henderson, supra*.

The Commission will now turn to appellant’s technical discrimination claims. Appellant argues technical discrimination in the appointing authority’s waiver of county preference and procedural error in violation of veterans’ preference. When there is an allegation of technical discrimination, no showing of intent is required. There must be evidence, however, to show appellant was harmed by the technical noncompliance or that because of the peculiar nature of the procedural impropriety that he or she could have been harmed but there is no way to prove that for certain. *Pronko*, 114 Pa. Commw. at 439, 539 A.2d at 462.

In support of his county preference waiver claim,¹⁰ appellant argued the appointing authority went beyond the thirty-nine in-county candidates to include candidates who were out-of-county. N.T. p. 58. Appellant believed the appointing authority had to interview the initial thirty-nine in-county candidates before out-of-county Code 17 candidates could be considered. N.T. pp. 59, 89. Appellant contended because the appointing authority sought out-of-county candidates to fill the position, it waived the county preference requirement. N.T. p. 59.

Having reviewed the record, the peculiar nature of the procedural impropriety of re-adding the out-of-county Code 17 candidates into the amended referral list after the appointing authority filtered their referral list by county preference to be an error. Cortes credibly¹¹ admitted the instruction and subsequent admission of the out-of-county Code 17 candidates to the referral list was an error. N.T. p. 349, 384, 399. As a result, the Code 17 candidates, Morrison, Yefchak, and Pinto should not have been given the opportunity to schedule or participate in an interview until all the qualified thirty-nine in-county candidates were vetted.

Nevertheless, while the inclusion of the Code 17 candidates in the hiring process was a procedural error, the Commission finds it was a harmless error. Appellant was not prejudiced by the inclusion of the Code 17 candidates. Specifically, Morrison chose to not schedule and interview, and although Yefchak

¹⁰ Appellant further argued the appointing authority has an erroneous record keeping system recording the timing of his email and the appointing authority's technology delayed the timing of his correspondence. N.T. pp. 40-41, 48-49, 50. The Commission considers the potential technological record keeping system argument to not be dispositive to whether appellant's non-selection was motivated by either traditional or technical discrimination. The issue raised before the Commission is whether appellant's non-selection was motivated by disparate treatment, bias, veterans' preference discrimination, and technical discrimination.

¹¹ It is the duty and within the purview of the Commission to determine the credibility of witnesses and the value of their testimony. *State Correctional Institution at Graterford, Department of Corrections, v. Jordan*, 95 Pa. Commw. 475, 478, 505 A.2d 339, 341 (1986);

and Pinto were interviewed, they were ultimately not selected for the position. *See* Findings of Fact 36, 37, 38. If the appointing authority had selected one of the Code 17 candidates into the Income Maintenance Caseworker position, then appellant would be harmed by their inclusion and his exclusion from the hiring process. Yet, in this specific case, the selected candidates, Schwarz and Yourey, were from within Schuylkill County and were permitted to be interviewed through the appointing authority's county preference. *See* Finding of Fact 39. As a result, appellant's non-selection was not motivated by technical discrimination because the inclusion of the Code 17 candidate was a harmless error and did not constitute a waiver. *Pronko, supra.*

In support of his veterans' preference discrimination claim, appellant testified he is an out-of-county veteran who applied for the Income Maintenance Caseworker position and has never changed his residence to Schuylkill County. N.T. pp. 62, 87. After being deemed eligible for the position, appellant received a total score of 110 and was tied for first on the initial referral list. N.T. p. 62; Ap. Ex. 302.3. Appellant argued the Commonwealth system for merit-system hiring for civil service and veterans' preference should be designed to address the needs of the Commonwealth. Yet, even though appellant received the top score among the eligible candidates and despite being a veteran, appellant contended his exclusion from an interview revealed an unfair hiring system. N.T. pp. 80-81.

Based upon a review of the record, the Commission finds appellant's non-selection was not a violation of veterans' preference. Pursuant to the Veterans' Preference Act, every veteran who passes the civil service examination for the position in question is entitled to have ten points added to their final score. 51 Pa. C.S. § 7103(a). When there is a certified List of Eligibles, in this case referred to as

referral list, and a veteran is one of the three highest scoring eligibles on the certification list, the veteran will have a mandatory preference for appointment to the public position over any other non-veteran candidate within the Rule-of-Three. 51 Pa. C.S. § 7104(b). Additionally, an appointing authority may choose from alternative recruitment methods. *Sean M. Donahue v. State Civil Service Commission*, 128 C.D. 2020 (May 3, 2021 (unpublished)).

In this matter, the appointing authority requested various recruitment options, including county preference and veterans' preference. *See* Findings of Fact 5, 6, 7, 8, 9, 13. The appointing authority selected to filter its referral list by county preference. *See* Finding of Fact 29. As articulated above, appellant is an out-of-county candidate. *See* Finding of Fact 15. Appellant was excluded because he did not reside within Schuylkill County. Consequently, appellant was not on the referral list the appointing authority used to fill the Income Maintenance Caseworker position for veterans' preference to apply. As such, appellant's non-selection was not the result of a violation of veterans' preference.

In summation, the Commission finds appellant's non-selection for appointment to the Income Maintenance Caseworker position was not motivated by discrimination. Appellant's non-selection was not motivated by disparate treatment, or bias against appellant as a veteran or personally against him. Additionally, appellant's non-selection was pursuant to the appointing authority's execution of county preference in the hiring process and not a violation of veterans' preference. While there was an error in the inclusion of the Code 17 candidates in the amended referral list, this inclusion was harmless. Accordingly, we enter the following:

CONCLUSION OF LAW

Appellant has failed to present evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Sean Donahue challenging his non-selection for appointment to Income Maintenance Caseworker (R-2022-40248-44720) with the Schuylkill County Assistance Office, Department of Human Services, and sustains the action of the Schuylkill County Assistance Office, Department of Human Services, in the non-selection of Sean Donahue to Income Maintenance Caseworker (R-2022-40248-44720) employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Issued: April 18, 2024