

Mr. Chairman and Members of the Committee, I wish to thank you for inviting me to this Hearing and for giving me the opportunity to bring to your attention some of the very serious concerns that I have about the State Civil Service Commission and its treatment of Veterans.

There are innumerable examples that I could bring to your attention including the Commission's failure to address less obvious activities such as the way pay grades for Vets, once employed, can be arbitrarily suppressed by HR Offices. (Appendix 1) But for today's testimony, I will limit my comments to three basic issues: the Rule of Three; Suitability, and Due Process.

Very troubling precedents have been set by the Civil Service Commission's misapplication of laws and regulations in Burns VS The Pennsylvania Department of Transportation. (Appeal Number 24226)

Those precedents, if allowed to stand, undermine the most basic foundations of the State's merit system. The precedents that have been set permit any Agency to refuse to interview a certified eligible Veteran ranked within the Rule of Three and also permit Agency Human Resource Staff to use subjective criteria to weed out higher ranking candidates under the guise of suitability.

Following are the highlights of this specific situation.

A family member was the highest scoring Veteran within the Rule of Three on the Administration and Management Trainee certified eligible list.

The availability survey which he returned expressing his interest in being considered for the position stated that he would hear within two weeks and that interviews would be "...based on...ranking."

Failing to Bear anything further and after waiting for more than a month, he followed up by email and telephone with PennDOT in order to inquire as to when he would be scheduled for an interview.

He was told by an HR contact at PennDOT, that interviews had already been conducted and that the slot had been filled. When he asked why he was not

Rebecca Burns  
March 7, 2012

given an interview, she told him that the people interviewed were chosen based on resumes and not on their ranking on the Civil Service list.

During that telephone conversation PennDOT's contact put an HR Analyst with the Civil Service Commission on the phone.

My family member then asked that analyst the same question which was, how could he have been bypassed for an interview since he was the Veteran holding the highest score within the Rule of Three.

He was told by the Civil Service Analyst that the Rule of Three *had* been applied and that the Rule of Three simply means that if a Veteran scores in the top three on a list then, by proxy, every veteran on the list becomes eligible for the position and that any veteran can be hired regardless of rank on the list.

Getting nowhere with either person, he then penned a formal letter of inquiry to the SCSC Executive Director, whose written response supported the SCSC Analyst's assertion that the only benefit to a Veteran for being ranked within the Rule of Three is the ability to act as a proxy for lower scoring Vets and, further, that it is perfectly acceptable to use resumes instead of scores and rankings to select who is given an interview.

My family member subsequently filed an appeal with the State Civil Service Commission. A hearing was scheduled and the issue was that "...the appointing authority filled an AMT position without offering... an opportunity to interview for the position, despite the fact that appellant is a veteran and was ranked highest on the employment certification from which the appointment was made..." (Burns Adjudication Page 1)

In the Civil Service Ruling you will find what can only be termed a shocking and outrageous statement. "...appellant would have the Commission interpret the ... Management Directive...as requiring that the appointing authority **must always interview veterans within the Rule of Three. We disagree with the appellant's interpretation.**" [emphasis added] (Burns Adjudication Page 15)

Mr. Chairman and Committee Members, it doesn't get any more basic than

Rebecca Burns  
March 7, 2012

the Rule of Three. Please note that I have included applicable references in my written statement.

Management Directive 580.10, "When an availability survey is made and veterans are among the available eligibles, schedule the veterans within the Rule-of- Three for interview first."

State Civil Service Act Article VI Section 602, "If the vacant position is to be filled from an employment or promotion list, the appointing authority shall select a person who is among the three highest ranking available persons on the certification of eligibles."

State Civil Service Rules Section 91.3 Definitions: *Rule of three*—The requirement that the appointing authority is required to choose from among the three highest-ranking available eligibles in filling a particular vacancy...."

Auditor General Wagner's Special Performance Audit "When a veteran's final score is among the top three scores on a list (known as the Rule of Three), the hiring agency is required to select the veteran for that position." (Veterans Preference Program Audit Page 22),

Auditor General Wagner's Special Performance Audit , **Executive Director Wallace's** response on behalf of the Commission, "...the 'Rule of Three' refers to most types of certifications issued by the Commission. If an employment list is the mechanism used to effectuate an appointment, an Agency may not appoint an eligible outside of the Rule of Three..." (Veterans Preference Program Audit Page 54, Appendix B)

Housing Authority of the County of Chester VS Pennsylvania State Civil Service Commission, "Furthermore, we note that the Legislature has imposed a categorical requirement that appointing authorities make their appointment only from the top three scoring candidates on the civil service list." (State Supreme Court, Middle District, J-111-1998 Page 21 )

Yet the Civil Service Commission in its infinite wisdom ruled that a Veteran holding the highest score within the Rule of Three is not even entitled to an interview and that precedent stands today.

Rebecca Bums  
March 7, 2012

My family member appealed being excluded from interview. He did not claim that he was entitled to the job.

In order to support their stance on Veterans Preference as applied to the Rule of Three, the Commissioners proceeded to selectively and inappropriately impose language found in Law, Regulation and Directives.

The rabbit they pulled out of their hat to justify PennDOT's conduct is a process known as Suitability.

The Ruling says: 'The management directive at issue also permits the appointing authority to interview all other veterans when the available veterans within the Rule of Three are not suitable; and it does not specify that the determination of suitability can be made only upon an actual interview.'" (Burns Adjudication Page 15)

Yet, each and every one of the citations set forth by Civil Service in this adjudication refers to suitability for appointment or promotion. Not one of their sources reference suitability for interview.

On this topic, the State Supreme Court Decision clearly says, "The appointing authority may not impose additional threshold requirements on a veteran under the guise that it is setting forth the 'requisite qualifications'..." (State Supreme Court, Middle District, J-111-1998 Page 22)

As for Suitability, Title 51 Section 7105 is clear when it says in part that "The lack of academic or scholastic training or experience...which does not in fact incapacitate any such soldier shall not be deemed to disqualify him...."

It is Section 95.1 of the Rules where the groundwork for the Suitability process is established. Management Directive 580.34, Removal of Eligibles for Certification or Appointment in the Classified Service, is the appropriate related Directive.

Suitability is a formal procedure with both notification and due process

requirements. MD 580.34, "OBJECTIVE. To explain policy, responsibilities, and procedures when requesting the removal of an eligible from a civil service certification or from consideration for a specific job title...."

The Civil Service Commissioners pulled out all stops to justify their application of suitability. To that end, they relied on the sworn testimony of the Chief of Section 1 of the Classification and Placement Section of PennDOT.

The Ruling says: "The appointing authority presented **credible testimony** that it was seeking candidates for the AMT position who had experience **as indicated in their resume** related to the vacancy in question, **namely experience in working in human resources, classification and placement.**" [emphasis added] (Burns Adjudication Page 15)

Yet, a document in the Chief of Section One's own handwriting was introduced showing that the candidate interviewed and selected for this slot had *no* HR experience.

That document also showed that of the nine veterans on the Veterans' list only one had "some HR" experience. Two of the three veterans selected by the PennDOT Section Chief for interview had *no* HR experience and one of the two with no HR experience was selected to fill the position.

There were actually three separate certified lists with a total of seventeen names. Of those seventeen, only two candidates were identified by the PennDOT Section Chief as having HR experience and only one veteran as having "some" HR experience.

That PennDOT document is part of the official record. Despite that fact, the Decision says, "In this case the appointing authority considered merit-based criteria to determine which of the veterans on the civil service list would be **suitable to be interviewed**; to require otherwise in this case would have been **inefficient and contrary to the scope and spirit of the Act.**" [emphasis added] (Burns Adjudication Page 15)

If the "suitability" rationale as upheld by the Commission and applied to my family member is legitimate, then eight of the nine candidates on the

veterans list and six of the eight candidates on the remaining two lists should have also been deemed unsuitable for interview,

The Civil Service Commissioners had to know that Section 601 of the State Civil Service Act; Section 95.5a of the State Civil Service Rules, Management Directive 580.15 and the referenced State Supreme Court Ruling lay out the basis of and process for an appointing authority to request that the Executive Director of the Civil Service Commission establish a selective certification list of only those eligibles who "...meet specific job criteria or who possess special knowledge, skills and abilities essential to the performance of certain jobs." (MD 580.15 Opening Statement)

In this situation, either such a certification was not requested by PennDOT or the request was not authorized by Civil Service's Executive Director.

Across the board misapplication of law, regulation and policy is unacceptable. It makes one question just how pervasive and institutionalized this conduct has become. At a minimum, it raises concerns about the relationship between the Civil Service Commission and the Agencies that it is mandated to police.

While still under oath, the PennDOT Section Chief changed his testimony saying that **Burns** was not selected for an interview because the Chief thought that **Burns** would be bored. Merit-related criteria? I think not.

As said so eloquently in the Housing Authority Decision, "Finally, we note that allowing an employer to develop additional hiring criteria for civil service positions would defeat the principal purpose of the Civil Service Act by opening the door to the very abuses which civil service testing was designed to protect against. Hiring decisions rooted in patronage or nepotism could easily be concealed under the guise that a certain candidate was the only one who possessed the 'requisite qualifications.' Unnecessary litigation would be fostered as the overlooked candidates challenge the propriety of the additional criteria used by the appointing authority." (State Supreme Court, Middle District, J-111-1998 Page 22)

Now to my final topic Due Process or rather the illusion of Due Process.

Here is a condensed version of how it works:

1. You have twenty calendar days to file an appeal.
2. Your appeal goes to the Commission.
3. The Commission meets to decide whether or not you will be granted a hearing.
4. Hearings are at the sole discretion of the Commission.
5. The Commission decides what type of hearing you will receive.
6. One or more Commissioners hold the hearing.
7. You may represent yourself or **at your own expense** hire an attorney to represent you.
8. You may not be represented by a non-legal person.
9. The appointing authority will **be** represented by an attorney.
10. The Commissioners control all aspects of the Hearing.
11. The Commissioners vote on the outcome.
12. The Commission's decision is mailed to you.
13. In true Due Process the appellant is advised of their rights to appeal - not true in this case.
14. You have fifteen **calendar days** from the **mailing date** to appeal an unfavorable decision.
15. Please note, decisions are sent by regular mail.
16. Any appeal goes back directly back to the Commission - the same folks who ruled against you in the first place.
17. The Commission has sole discretion to accept or deny your request for reconsideration.
18. Your request can be denied for no reason.
19. You have thirty calendar days from the **mailing date** of the **original decision** to appeal to Commonwealth Court.

Due Process is supposed to be a fair and impartial review of the facts with a unbiased opportunity for a second opinion.

The Civil Service Appeals process is long and expensive and the deck most certainly is stacked on the side of the appointing authority. The Commissioners sit as Judge, Jury and Executioner with no checks and balances.

In summation:

Rebecca Bums  
March 7, 2012

- Veterans' preference has no value to and can actually harm a Veteran in the Rule of Three.
- An appointing authority can completely disregard results of Civil Service tests.
- Scores on tests have no value.
- Rankings are disregarded.
- Certified eligibles are deemed unsuitable for interview without benefit of due process.
- Agencies use resumes and subjective criteria such as opinions to select whomever they wish to interview.
- SCSC either misunderstands and/or selectively misapplies its own laws, regulations and directives.  
Real due process is an illusion.
- The burden for challenging unfair treatment is extraordinarily expensive and the barriers to a challenge are many and extremely high.

So, why continue to expend money for a State Civil Service Commission when the Commission, by its lack of due diligence, renders irrelevant: its own laws, rules and directives.

Pennsylvania's Veterans deserve fair treatment in employment -it is their right and it is the law.



## References

1. State Civil Service Commission Adjudication  
Todd D. Bums v The Pennsylvania Department of Transportation  
Appeal No. 24226
2. A Special Performance Audit of the State Civil Service Commission  
Veterans' Preference Program  
November 2008
3. J-111-1998 In the Supreme Court of Pennsylvania  
Middle District  
Housing Authority of the County of Chester v Pennsylvania  
State Civil Service Commission
4. Rules of The Civil Service Commission  
Title 4, Part IV, Subparts A & B
5. Civil Service Act of August 5, 1941 (P. L. 752, No. 286)
6. Management Directive 580.10 - Rights of Certified Eligibles in the  
Classified Service
7. Management Directive 580.15 - Selective Certification of Classified  
Eligibles
8. Management Directive 580.34 - Removal of Eligibles for Certification or  
Appointment in the Classified Service
9. Title 5I (Military Affairs) of the Pennsylvania Consolidated Statutes

## 10. SCSC Pamphlet #13 Information About Civil Service Appeals

### Appendix 1

Most Agency HR Offices, particularly NR Directors and Classification Directors, act with autonomy when it comes to a multitude of personnel actions.

A personnel action means an appointment, promotion, disciplinary action, transfer, reassignment, reinstatement, restoration, reemployment, performance evaluation, position description, desk audit or request for reclassification. It also can include any other decision concerning pay, benefits, awards, training, or any other significant change in duties, responsibilities, or working conditions. Failure to take an action that should have been taken is also considered a personnel action.

HR Directors and Classification Directors manipulate HR processes with impunity and with virtually no accountability while employees have limited avenues of recourse. Retaliation, while prohibited, is alive and well in the Agencies.

Unless and until someone is disciplined, charged and/or fired or in some manner held accountable, nothing will change.

Following is a list of some of the types of prohibited personnel practices being taken by Agency HR Offices in Pennsylvania.

[ NOTE: Prohibited Personnel Practices (PPP) have been codified as part of the Federal Merit System USC Title 5, Part III , Subpart A ,Chapter 23 § 2302 Prohibited personnel practices.]

- Refusal to post job descriptions
  - Refusal to perform desk audits
  - Failure to perform desk audits in a timely manner
- Selecting unqualified or lesser qualified persons to fill slots while passing over qualified candidates

- Erroneously eliminating employees from bidding on positions by saying they are not qualified
- Conversely authorizing persons to bid on positions for which they are not qualified
  - Passing over qualified candidates and selecting relatives or friends to fill vacancies
  - Encouraging and even directing candidates to remove their names from consideration
- Pre-selecting someone for a position
- Misclassifying positions
- Denying employees their rights to due process
- Blocking employees from opportunities for upgrade

As illustration, I submit the following and current example of an Agency HR Officer manipulating a personnel action.

A desk audit was requested by an employee who is also a Veteran.

The Agency HR Office, denied that request claiming (falsely) that they had already performed a desk audit as part of that employee's routine position description process.

The same Agency HR Office had failed to write, approve or post a position description for this employee for approximately three years.

The Agency HR Office did not follow any of the procedures established for the performance of a desk audit.

The employee was not advised that his position was being desk audited.

No technical assessment or official result: **was** issued to him.

He was never advised of his right to appeal the Agency's decision.

After the Agency's HR Office denied the Veteran's desk audit request, he asked to exercise his right to appeal to OA.

The Agency HR Office denied his right to appeal saying that it was too long

after the fact. (The desk audit allegedly took place in February 2011)

The employee responded that he had never been advised of his rights to Due Process.

After a prolonged email exchange between the Agency HR Office and the employee, the Agency HR Office finally moved the desk audit to OA as an appeal.

As part of an appeal to OA a current and official position description is transmitted to OA by the Agency HR Office.

The employee was notified by OA that the position description transmitted to them by the Agency's HR Office did not match the employees official description as posted on line.

The Agency HR Office informed OA that they had mistakenly sent an older draft.

OA provided the Veteran with a copy of the position description given to them by the Agency's HR Office.

The position description sent by the Agency HR Office to OA matches none of the drafts the Agency developed between 2010 and 2011 for the current incumbent .

The contents of that description do; however, include a minimal amount of verbiage found in the position description of the previous incumbent, who vacated that position in early 2008.

A side by side analysis of the official position description for the previous incumbent, the official position description for the current incumbent and the document transmitted to OA for purpose of the Desk Audit Appeal clearly illustrates the fact that someone in the Agency HR Office had removed from the position description they transmitted to OA virtually all higher level duties; gutted the decision making authority ; marginalized the position purpose; removed requirements, and replaced the essential functions with lower level functions.

Rebecca Bums  
March 7, 2012

The result of auditing such a weak position description would most surely have resulted in a downward reclassification of the current incumbent.

An involuntary demotion based on reclassification is only heard by SCSC if you allege discrimination. Thus, no recourse would be available to the employee.

There are recent adjudications posted on the SCSC website from this same Agency in which positions have been reclassified downward resulting in involuntary demotions. There is also an adjudication where a person was prohibited from bidding on a promotion because the same Agency falsely said they were not qualified.

Because of a lack of oversight and accountability, prohibited personnel practices have become an epidemic.

There appears to be no will by SCSC or OA to enforce their own rules or change the status quo.

The only one paying a price is any employee who runs afoul of an HR Officer.