

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of S.B., Rowan
University

CSC Docket Nos. 2016-1207

Discrimination Appeal

ISSUED: **DEC 14 2016** (SLK)

S.B., a Professor at Rowan University, represented by Patricia A. Barasch, Esq., appeals the decision of the Executive Vice President, which found sufficient evidence to support a finding that he violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, A.O., a female graduate student who worked in a lab where S.B., a male, was the Supervisor/Mentor, filed a complaint in May 2015 with the Office of Equity and Diversity (OED), which alleged that S.B. treated her and other women unfairly when they made life choices with which he did not agree. Specifically, A.O. alleged that S.B. discriminated against her because he did not agree with her choice to go to medical school. In particular, she alleged that when S.B. heard that A.O. planned on going to medical school, he cut back her hours in the lab, removed her from appropriate work in the lab and only assigned her menial work, and made derogatory comments against her to others in the lab. Further, she alleged that when she raised her concerns with the Senior Associate Dean, he further withdrew his support and constructively evicted her from the lab by telling her there was no need for her to return.

The investigation revealed that when A.O. decided to take the MCAT and apply for medical school, projects were taken away from her and assigned to other students, she was assigned ministerial work like cleaning and maintenance in the lab, and her hours were cut. Further, when A.O. approached S.B. as to why her hours were cut, he responded to her by stating that they were out of funds. However, the financial office rebutted this assertion. The investigation found that S.B. evidently told her that he cut hours for her benefit so that she would have time to study for the MCAT. However, A.O. did not request this "accommodation" and

this was not done for any male who had worked in S.B.'s lab and taken the MCAT. Additionally, S.B. told others that he was concerned about A.O.'s behavior and speculated that she might be on drugs and medication and said she should not have access to chemicals in the lab. When A.O. sought the advice of the Senior Associate Dean, S.B. told A.O. that it made him uncomfortable to have her in his lab and he withdrew the option that A.O. could continue to work in the lab for another year. Instead, S.B. told her that the current experiment on which she was working would have to be her thesis since her position in the lab would end when the experiment ended, stopped speaking with her, and by May told her she had no reason to continue coming into the lab.

Further, witnesses interviewed by the investigator confirmed a pattern where women would "fall from grace" if they made life choices, such as teaching a course in college, taking the MCAT, getting into medical school, getting married, and being pregnant, with which S.B. did not agree. This pattern included S.B. "backing away" from them, having lab duties taken away, isolating them from S.B. and important projects, assigning them to an isolated bench, increasing their hours, and "badmouthing" them to others. However, there was no evidence to suggest that male students suffered similar consequences. On the contrary, female students who "fell from grace" unanimously felt undermined in the lab and worried about their futures and those who had not yet "fallen" perceived that he was punishing those who had. Witnesses confirmed that he liked to gossip about them and disparage them to others and several stated that S.B. advised them to complete their degrees before starting a family. Additionally, witnesses told the investigator that they kept their personal lives hidden from S.B. because they were afraid that he would do something that would hurt their chances toward obtaining a degree.

The investigation also revealed that S.B. made negative comments about people based upon race, religion, and ethnicity. For example, S.B. said that black students need more money and support because of their lower grades and that these students were destroying the Masters' program, made comments about Jewish individuals, and made a statement about an Iranian student who "for all they knew was a terrorist so do not upset her." Therefore, the appointing authority determined that S.B. violated the State Policy and that he could no longer be allowed to serve as a Mentor.

On appeal, S.B. contends that as a tenured Professor at Rowan, he is not subject to the jurisdiction of the Civil Service Commission (Commission). Nevertheless, S.B. questions whether the appointing authority is discriminating against him as he is the only non-white tenured faculty in his program, is retaliating against him for his on-going complaint that he is paid considerably less than other faculty in his department, and based on his laboratory's recent discoveries about the HPV virus. S.B. denies the allegation that A.O. "fell out of favor" with him because she decided to take the MCAT and go to medical school as

he states that he knew she wanted to go to medical school when he hired her. In this regard, he encouraged her to study for the MCAT and helped her choose a medically relevant project for her thesis. S.B. asserts that it was A.O. who approached him about cutting back her hours working in the lab so that she could prepare for the MCAT and he agreed to her request to help support her decision to pursue medical studies.

In response to the claim that he did not treat a male student in the same manner as he treated A.O., S.B. indicates that, to his knowledge, there was not a male student who took the MCAT while working in the lab. He denies that he directed A.O. not to return to the lab. Instead, S.B. presents that he encouraged and supported A.O.'s decision to complete the writing of her thesis outside of the lab. He denies the allegation that he speculated to others that A.O. was on drugs and/or medication. Instead, he claims that another graduate student approached him complaining that A.O. regularly wanted to discuss her emotional and mental health issues with her which made this student uncomfortable. Consequently, S.B. referred A.O. to the University's Program Director for the Graduate School. He denies that he ever restricted her access to chemicals and highlights that all students had access to the keys for the chemicals. S.B. contends that in the summer of 2014, he found A.O. sitting in the lab with her head down on her desk and, when he inquired as to whether she was "OK," she responded by stating that if she told him what was going on, "our relationship would not be professional." Thereafter, he contacted a staff member in the Office of the Graduate School of Biomedical Sciences and requested assistance for her. He asserts that he could not have retaliated against A.O. for speaking with the Senior Associate Dean, as stated in the determination letter, as he was unaware she had spoken to him.

S.B. contends that his statements made to the investigator have been distorted to meet the appointing authority's agenda as he denies that he ever told the investigator that he "considered the students [his] children." Rather, he presents that, during the interview, he commented that he had a daughter of a similar age and education level and therefore he could relate to his students' desire for work-life balance. He contradicts the findings that there was a "pattern" of his withdrawing his support when a student made a life choice with which he does not agree and states that he has supported numerous female students when they made choices regarding marriage and childbearing while pursuing medical studies. He highlights that he supported S.M-R. in her attempt to become a graduate student in the Ph.D. program after getting married and that he worked with G.Y. after she got married as they are currently working together to write up and publish her research findings in a peer-reviewed scientific journal. Further, S.B. disputes the findings that he "made negative comments about people based upon race, religion, and ethnicity" as he has always had a diverse student population working in his lab including both men and women and a variety of ethnicities and religions. He highlights that he is an Asian Hindu and his wife is Caucasian and of a Sephardic

Jewish and Irish background. He submits a recent course evaluation from his students to demonstrate that he is well received by his students. He requests that the decision that he violated that State Policy be reversed and that he be permitted to continue serving as a mentor and supervisor to students in the laboratory and in the Program.

In response, the appointing authority, represented by Monica V. Sabnis, Assistant General Counsel, indicates that S.B., A.O. and six other individuals were interviewed as part of the investigation. It presents that A.O. began noticing two other Ph.D. students who were being mistreated by S.B. A.O. felt that S.B. created a hostile work environment by isolating these two students and the students believed that they were being treated differently because of personal choices. It notes that these two students left S.B.'s lab because of his treatment towards them. A.O. asserts that she began receiving differential treatment from S.B., including having her hours cut and projects taken away from her, after informing him of her plans to take the MCAT. When A.O. asked him why her hours were being cut, S.B. responded by stating he had run out of money. However, the financial aid office informed her that money was still available. When A.O. approached S.B. about this to let him know that the financial aid office said that money was still available for her, he replied that he cut her hours as she needed time to study for the MCAT. The investigation found that A.O. never asked to work less hours and that all A.O. was allowed to do was cleaning and maintenance work, which did not allow her to work on any experiments which she needed to complete for her Masters' project.

A.O. stated that S.B. was telling others that he was concerned that she was taking drugs and that S.B. told her that he was uncomfortable having her in his lab. However, one individual who was interviewed stated that, at first, a student is considered a "golden child" and then if that student makes a life choice that S.B. does not agree with, the student falls out of his favor, he withdraws his support, and talks negatively about that student. For example, it was reported during the interview process that when a student who was on vacation was getting married, S.B. told students in the lab that this student was not focused and her new family was negatively influencing her. It was indicated during the interviews that there were at least two students who, after S.B. learned that they were pregnant, were assigned menial tasks and S.B. stopped supporting them in their pursuit of their Ph. D. degrees. Additionally, S.B. started taking projects away from these students so that they did not have enough data to complete papers or projects needed to advance their careers.

Witnesses indicated that S.B. told one student that "children are the devil so don't have any because it will ruin your life" and that he advised another student to complete her degree before starting a family. The investigation found that one student was afraid to tell him that she got married due to fear of retaliation and S.B. told a student that "there was a time for managing home, marriage, and

children; that you cannot have them and be a true scientist because you want to be mobile and be able to go wherever your career takes you." Another witness revealed that S.B. told a student that since she became pregnant she would have to work longer hours to get more done since she would not produce as much. It was reported by another witness that S.B. advised a student, who ultimately left his lab, that this student should move to an apartment closer to campus, pick a daycare closer to campus, and provided other advice that was considered inappropriate for his position. Additionally, the investigation revealed that he commented, "If you're Indian you probably have a Dunkin Donuts" and "Religion is for old people, for young people it interferes with their work." The investigation also found that S.B.'s version of what occurred was unable to be corroborated by other witnesses.

In response to S.B.'s claim that the appointing authority simply accepted the allegations against him as true without providing him an opportunity to respond, the appointing authority states he was interviewed by the Vice President of Equity and Diversity. Further, although S.B. did not make his claim that the appointing authority may be discriminating against him because of his complaint regarding the pay disparity between him and others in his department, this allegation was reviewed and it was determined that S.B.'s pay was appropriate based upon the research dollars he brings into the appointing authority and other legitimate business factors. In response to S.B.'s claim that he **never** told A.O. not to come to the lab, it attaches a May 15, 2015 email which states that he informed her that she did not need to come in, she should finish her thesis as she sees fit, and further, that there is no need for her to report to the lab. Moreover, although he denies that he discussed her possible drug/medicine use with anyone, A.O. reported that a student approached her to express S.B.'s concerns regarding her possible drug/medicine use and stated that he told the students not to let her have access to chemicals in the lab. Additionally, a Department Chair stated that he discussed A.O.'s medicine use with him. Although S.B. alleges that the investigation distorted and contorted statements made by him to "fit" its "agenda", the investigation followed the normal procedures in the investigation and reached its conclusion after interviewing numerous individuals.

It maintains that the S.B. specifically stated that he thinks of the students like his children and inappropriately provided advice on getting married, having children, and caring for children. S.B. repeatedly described his role as a "father figure" which is inappropriate and goes beyond the appropriate role of a mentor. In reply to S.B. presenting S.M-R. and G.Y. as examples of students he supported in an attempt to show he does not have a "pattern" of withdrawing support from students who make life choices he does not agree with, the investigation revealed that after S.M-R. found out that she was pregnant, she was treated differently by S.B. and she ultimately chose to leave his lab and work with another professor. Additionally, the investigation revealed that individuals who were interviewed confirmed that S.B. made comments about Indians' owning Dunkin Donuts, religion is for old people,

black students destroying the Masters' program, Jewish individuals and their money, Obama's alleged lack of education, and an Iranian student possibly being a terrorist as stated above.

In reply, S.B. presents that he was asked to appear before a committee regarding a "Title IX" complaint; however, he was not provided any information about this session prior to the meeting in order to prepare a proper defense. He states that he has an important witness that directly related to several of the complaints which he did not have the opportunity to present. He reiterates that he has not been given concrete evidence regarding these charges and there are only statements made by disgruntled students whose obvious goal was to paint a negative picture of him. He emphasizes his concern that the appointing authority is discriminating against him based on his race and/or national origin or retaliating against him due to his on-going complaints regarding his pay disparity. He claims that he ranks near the top of the faculty members regarding bringing in research dollars and therefore disputes the appointing authority's statement that his lower salary compared to his peers is appropriate. He also maintains that other non-white faculty members have been forced out and that he is the longest tenured non-white faculty member in his department. He requests that if the Commission is not inclined to reverse the decision that he violated that State Policy, that he should be given the opportunity to present a defense which includes testimony from his witnesses and to view all of the appointing authority's evidence.

With respect to the background and context of the investigation, S.B. states that when he was interviewed, he was given a series of random questions, but was not actually provided specific charges or events to which he could respond. He also questions whether it was appropriate that two administrators who were part of his interview also gave testimony against him. He presents that after he was interviewed, all of his students were advised not to return to his laboratory until the investigation was completed, which was against his students' wishes, including G.Y., who expressed her interest to quit the Ph.D. program altogether. He asserts that since the appointing authority's graduate school administrators were acting as investigators, it is his understanding that the students felt pressure to report what they felt the administrators wanted to hear. He emphasizes that all the people interviewed were selected by the administrators and he did not have any opportunity to present any witnesses on his behalf. He represents that there are three other students and one faculty in the laboratory who were not contacted or interviewed who could provide information that directly undermines the allegations and findings against him. He also asserts that the administration did not keep the investigation confidential as one of his students, M.P., expressed her desire to return to his lab after receiving her degree and a faculty member stated that she "must be very brave" to go back into his lab.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or discrimination is prohibited and will not be tolerated. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

N.J.A.C. 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, one issue needs to be addressed. S.B. argues that, as tenured Professor at a State University, he is not subject to the Commission's jurisdiction. However, the Commission does have jurisdiction to review unlawful discriminatory practices with respect to the State Colleges. *See In the Matter of Gloria Dickinson* (MSB, decided July 25, 1989).

The Commission has conducted a review of the record in this matter and finds that the appellant violated the State Policy. A.O. alleged that S.B. treated her and other women unfairly when they made life choices with which he did not agree. The investigation consisted of interviews of S.B., A.O. and six other witnesses and multiple witnesses corroborated that S.B. engaged in a pattern of behavior where women would "fall from grace" if they made life choices, such as teaching a course in college, taking the MCAT, getting into medical school, getting married, and being pregnant, with which S.B. did not agree. Further, there was no evidence to suggest that male students suffered similar consequences. While S.B. denied the allegations, argued that he was being retaliated against for his on-going pay disparity dispute, and claims that the witnesses' statements came from disgruntled students, the investigation found that S.B.'s version of what occurred was unable to be corroborated by other witnesses.

Additionally, S.B. complained that the appointing authority simply accepted the allegations against him as true without providing him an opportunity to respond and present witnesses. However, the record indicates that he was interviewed by the Vice President of Equity and Diversity and he was given the opportunity to provide the names of witnesses. The appellant was required to

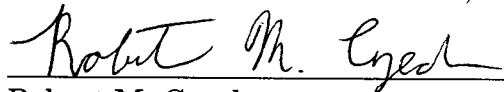
provide the names of all witnesses who had relevant information who could rebut the allegations made by A.O. during his interview so that they could interviewed as part of the investigation. While the appellant states on appeal that he supported S.M-R's decision to get in a Ph.D. program after she was married and working with G.Y. on a research publication after she was married, he does not explain how they would dispute specific facts that were found in the investigation. Although the appellant now suggests that other unnamed individuals should have been interviewed, he does not explain which specific allegations or facts would be disputed by these witnesses. Therefore, the failure to interview S.M-R. and G.Y., as well as the unnamed witnesses he suggests on appeal, would not change the outcome in this matter. Thus, as multiple witnesses corroborated the allegations and the investigation also revealed that S.B. made negative comments about people based upon race, religion, and ethnicity and this behavior was substantiated by multiple witnesses, the Commission finds that the investigation was thorough and impartial and the appellant has failed to meet his burden of proof.

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 DECEMBER, 2016



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