

B-27

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of T.H., Department of
Transportation

CSC Docket No. 2017-1220

Discrimination Appeal

ISSUED: ~~MAR~~ 15 2017 (SLK)

T.H., a Principal Planner Transportation with the Department of Transportation, appeals the decision of the Executive Director, Division of Civil Rights and Affirmative Action (DCRAA), which found that the appellant did not present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the appellant, an African-American male, filed a complaint alleging that he was subject to discrimination on the basis of race. Specifically, on March 3, 2016, he received a letter from P.T., a Caucasian male and a Manager 2 Department of Transportation Systems Planning, informing him that he did not meet the qualifications for Supervising Transportation Analyst. This position was created in an attempt to fill a position previously held by an Administrative Analyst. The appellant alleged that P.T. intentionally changed the title to one with more restrictive educational requirements in an attempt to exclude African-Americans from supervisory positions. In this regard, he asserted that the Administrative Analyst title required a Bachelor's degree while the Supervising Transportation Analyst title required a Bachelor's degree in specific disciplines. The appellant claimed that P.T. could have selected from other available titles, such as Senior Planner Transportation as he was the 1st ranked eligible on the promotional list, but chose not to do so to prevent him from competing for the new position. The DCRAA's investigation revealed that the Supervising Transportation Analyst position was retracted due to the small number of qualified candidates and newly acquired federal grant funding, and that the Division of Multimodal Services (Multimodal Services) was in the process of determining a title that would comply with the duties of the position as well as allow more candidates to compete.

Further, the investigation did not reveal that the Supervising Transportation Analyst title was initially chosen in an effort to exclude African-Americans.

On appeal, the appellant states that P.T. denied him an interview after consulting with Human Resources and the Division of Agency Services (Agency Services). The appellant asserts that the appointing authority discriminated against him as well and alleges that the investigation should have revealed its past discriminatory practices using similar tactics as evidenced by past lawsuits that he has won against it. The appellant contends that two Caucasian males who previously held his title were promoted to Supervising Transportation Analyst without a test to subvert his standing on a legitimate eligible list. He claims that DCRAA's finding that since the Supervising Transportation Analyst title was retracted there was no discrimination is insufficient based on the appointing authority's documented history of institutionalized discrimination. He requests that P.T. be disciplined and the appointing authority's alleged past discriminatory practices be made public in order to prevent these practices from reoccurring.

In reply, the DCRAA presents that in its interview with the appellant, he alleged that P.T. discriminated against him and not the appointing authority and his requested relief was to seek an opportunity to compete for promotions. As such, its investigation focused on P.T.'s actions and not the appointing authority. The investigation revealed that it was Human Resources that recommended that the Administrative Analyst title be replaced by a new title and Agency Services was in agreement. Therefore, P.T. could not have strategically reclassified the Administrative Analyst title. Further, Human Resources determined that the eligible list was too small after Agency Services determined eligibility based on evaluating the candidates' educational requirements. Accordingly, P.T. never held any interviews for Supervising Transportation Analyst. Human Resources then recommended that P.T. and Multimodal Services identify a new title in order to broaden the eligibility requirements. Multimodal Services, after considering newly received federal funding, selected Project Manager Transportation as the title that would best classify the duties of the position. It indicates that the Project Manager Transportation title does not have specific educational discipline requirements and therefore, the appellant can compete for a supervisory position as he requested. Further, it emphasizes that since there were no interviews held for Supervising Transportation Analyst because the position was going to be filled using another title, the appellant did not receive differential treatment or experience an adverse impact.

In response, the appellant states that at the time he applied for Supervising Transportation Analyst, he did not know that the announcement was for a position formerly held by an employee who served as an Administrative Analyst. He only knew that this title was new to Multimodal Services. He stands by his belief that this change was made to exclude African-Americans within Multimodal Services.

He claims that during his interview with DCRAA, he was only given the choice to complain against either P.T. or the appointing authority and was not given the option to name them both in his complaint. The appellant states that he always believed that both P.T. and the appointing authority discriminated against him and it was the DCRAA's coercion during his interview which led the investigation to only focus on P.T. He presents that there may be collusion between DCRAA and Human Resources as they both ultimately report to the appointing authority's Commissioner. The appellant indicates that his allegations regarding the promotion of two less qualified Caucasian males to the Supervising Transportation Analyst position demonstrates the appointing authority's institutional discriminatory practices. He believes that a proper investigation would have revealed a pattern of discrimination within the appointing authority. He acknowledges that he is not able to provide support regarding his allegation against the Director of Statewide Planning who promoted the two Caucasian males as he does not have access to personnel file requests for promotional positions. However, he states that the DCRAA should be able to access this information as part of an investigation.

CONCLUSION

N.J.A.C. 4A:7-3.1 states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race, is prohibited and will not be tolerated.

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.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that P.T. violated the State Policy. The record reveals that the appointing authority needed to fill a position previously held by an employee who served as an Administrative Analyst. Human Resources submitted a Position Classification Questionnaire to Agency Services and Agency Services agreed that this position should be filled using the Supervising Transportation Analyst title. Incumbents in this title are required to have a Bachelor's degree in certain disciplines. While the appellant possesses a Bachelor's degree, he did not have a Bachelor's degree in one of the specified disciplines. The appellant alleges that P.T. chose to fill the position with the Supervising Transportation Analyst title to exclude him from applying because he was African-American. However, the investigation revealed that it was Human Resources, along with Agency Services, who chose to fill this position with this title.

In this regard, it is emphasized that the Commission, *not* the appointing authority has the responsibility to determine the proper classification of positions utilized in State service. Thus, neither P.T. nor the appointing authority could have strategically reclassified the position to exclude him from competing as they do not make the final determination on what title is utilized to classify a position. Further, once it was discovered that there were not enough eligible candidates who could meet the education requirements for this title, in conjunction with the fact that the appointing authority had received new federal funding, the duties of the position changed which required it to be classified by another title, Project Manager Transportation. The Commission notes that appellant has not provided any evidence that P.T. chose or influenced the initial selection of the Supervising Transportation Analyst to fill the former Administrative Analyst position in order to exclude him from competing because he is African-American and mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. See *In the Matter of T.J.* (CSC, decided December 7, 2016).

The appellant also claims that P.T. discriminated against him because he did not allow him to interview for a position as a Supervising Transportation Analyst. However, there were no interviews for this title since there was newly acquired federal funding for the position and there were not enough candidates who met the eligibility requirements for the initial classification. Further, the appellant applied for the Project Manager Transportation (PS2075T) promotional examination and is currently the 16th ranked eligible on the list. Although the appointing authority has sent the appellant a letter indicating that it is not filling the position at this time, agency records indicate that this is an active list that does not expire until December 21, 2019. Moreover, the fact that the position was formerly held by an Administrative Analyst is not dispositive as it is not uncommon for the duties associated with a particular position to evolve over time which may warrant it to be classified by a different title.

On appeal, the appellant also states that not only did P.T. discriminate against him, but the appointing authority and the Director of Statewide Planning discriminated against him. However, since these claims were not part of his initial complaint, the DCRAA did not investigate these allegations. The appellant can file a new complaint making these allegations if he desires.

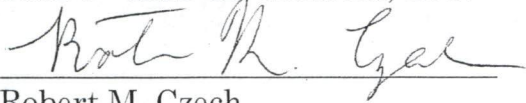
Accordingly, the Commission finds that the DCRAA's review was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 9th DAY OF MARCH, 2017



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