



STATE OF NEW JERSEY

In the Matter of S.T., Department of
Labor and Workforce Development

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

CSC Docket No. 2018-3774

Discrimination Appeal
(Corrected Decision)

ISSUED: APRIL 11, 2019 (CSM)

S.T., a Principal Examiner Unemployment Tax with the Department of Labor and Workforce Development (DLWD), appeals the determination of the Equal Employment Opportunity Officer, DLWD, 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).

The appellant filed a complaint alleging that R.M., an Assistant Commissioner, discriminated against him based on race, national origin, and retaliation. Specifically, the appellant claimed that R.M., denied A.S.'s proposal that he work on an "acting" basis as a Supervising Examiner and then perform a desk audit to be permanently placed in the position. He also claimed that A.S. and M.B., a Supervising Examiner Unemployment Tax, treated him poorly because they were friendly with R.M. Further, the appellant claimed that he was not selected for a provisional Supervising Examiner Unemployment Tax position. Rather, he asserted that two less qualified Caucasian individuals, one who only possessed a high school diploma, were selected. He also asserted that he was not selected for a Chief position because R.M. was biased against him. Finally, the appellant claimed that R.M. retaliated against him because he informed A.F., an Acting Commissioner, and C. F-S., a Deputy Commissioner, of R.M.'s alleged discriminatory conduct. The DLWD's Office of Diversity and Compliance (ODC) investigated these matters and determined that it could not substantiate the appellant's allegations.

On appeal, the appellant states that the ODC's investigation omitted the most important reason for his original complaint, that R.M. did not consider him for the pending Supervising Examiner Unemployment Tax position because he was the most qualified person for the position. In this regard, he states that he was "practically doing most of the work of that position for almost two years," but the candidates who were selected had the least amount of experience. The appellant also states that the interview for the position, as well as the Chief's position, was conducted by an Assistant Commissioner in his office, with two individuals who report to him, and one from another division. He claims that this was never done in the past, which suggests that it was all "part of R.M.'s scheme." As such, the appellant questions if the interviews were conducted to suit R.M.'s "agenda". With respect to the ODC's determination that no credible evidence was in the record to determine if A.S. proposes to have him serve on an "acting" basis as a Supervising Examiner Unemployment Tax, the appellant questions how he can prove that she made this statement as A.S. retired from State service. As such, the appellant contends that he was "used for two years doing that work". He also claims other employees have indicated that R.M. has a long history of treating minorities unfairly.

In response, the ODC states that its investigation determined that there was insufficient credible evidence to substantiate the appellant's allegations that R.M. acted against him due to his race, national origin, and retaliated against him. With respect to the appellant's allegation that he was the most qualified individual in 2016 for the provisional appointment, during the investigation, the ODC reviewed the personnel histories and resumes for the appellant as well as the two individuals selected for the position. The ODC's review indicated that all three individuals were similarly qualified for the position, noting that the appellant possessed a Master's degree and 24 years of experience, M.B., a Master's degree and 25 years of experience, and B.L., a Bachelor's degree and 22 years of experience. Thus, the appellant did not provide any objective evidence that he was the most qualified for the position or that he had been performing the duties for a number of years. Regarding the allegation that M.B. and A.S. treated him poorly, the investigation found that the appellant's ePAR during the time frame while he was under their supervision rated him as "Excellent." The investigation noted that M.B. did send the appellant an email on May 18, 2016 instructing him to send an email or verbally inform her that if he was going to leave work early. Although the email does cite potential disciplinary action, the investigation found that M.B. complied with DLWD policy.

In response to his allegation that he was not selected for the position in favor of two less qualified Caucasians, the ODC states that the appellant ranked 4th on the promotional list for Supervising Examiner Unemployment Tax (PS3219N). In conjunction with the score he received during the interview for the position, the ODC found that it would have been improper to bypass the two higher-ranked

eligibles on the promotional list to appoint the appellant. Moreover, it states that while the appellant attaches a nefarious motive for having another interviewer in the room, there is nothing objectively improper about having another interviewer from another division in the interview when all interviews were subjected to the same panel of interviewers. Concerning his allegation that he was not selected for a Chief's position, the ODC states that it reviewed the interview notes and score sheets and found that of the 11 individuals interviewed, the appellant scored lowest. Additionally, the appellant conceded during his interview with the ODC that the individual ultimately selected was capable of performing the job. Finally, the investigation found that R.M. did not retaliate against the appellant by keeping him at the Principal Examiner's title for 18 years. In this regard, the investigation found that R.M. was unaware of the appellant's prior complaints and that the individuals who were selected for the Chief's position had been in the Supervising Examiner title for 16 and 12 years, respectively. Therefore, the ODC concluded that hiring freezes and budget constraints contributed to the long tenure of the appellant as a Principal Investigator.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: 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 disability. Additionally, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

The Civil Service Commission has conducted a review of the record and finds that the appellant has not met his burden of proof. The investigation included interviewing witnesses and the review relevant documents, and it could not substantiate a violation of the State Policy. While the appellant argues that he was the most qualified individual for the provisional Supervising Examiner Unemployment Tax position, the investigation reviewed the personnel histories and resumes of the individuals selected and the appellant, found that they were all similarly qualified, and the division properly exercised its discretion in making its selections. Further, when permanent appointments were to be made to the Supervising Examiner Unemployment Tax title, the appellant ranked 4th on the eligible list and the investigation determined that there was no basis to bypass the two higher ranked eligibles that were permanently appointed. Regarding the conduct of the interviews, there is nothing objectively improper about having another interviewer in the room from another department as all interviewees were subjected to the same panel of interviewers. Moreover, the investigation found that

there was no evidence that the appellant performed the duties for two years or that there was a proposal that a desk audit be conducted to permanently place him in the position. In this regard, the Commission notes that if the appellant believed his position was misclassified, an individual does not need the approval of his or her appointing authority to file a classification review with this agency. Thus, he could have filed a request for classification review of his position to this agency. See *N.J.A.C. 4A:3-3.9*.

Additionally, the investigation found that M.B. and A.S. rated the appellant's performance as "Excellent" on his ePARS and that M.B. followed department policy when she asked him to send an email or verbally inform her if he was going to leave work early. Regarding the Chief's position, the investigation determined that of the 11 individuals who were interviewed for the position, the appellant scored the lowest. Finally, there was no evidence that R.M. retaliated against the appellant by keeping him in the same title for 18 years as the individuals who were appointed to Chief had been in their titles for 16 and 12 years, respectively. Thus, the ODC concluded that other factors, such as budget constraints and hiring freezing contributed to the long tenure of individuals in the Principal Examiner level titles. There is nothing in the record or in his appeal submissions to suggest that the ODC's investigation was on these matters was not thorough and impartial or that these actions were in violation of the State Policy.

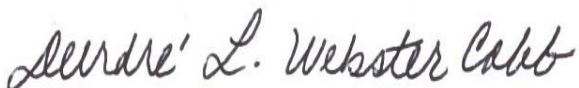
Accordingly, the Commission finds that the ODC's investigation was thorough and impartial, and the record supports a finding that there was not a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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
27TH DAY OF MARCH, 2019



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