



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of B.L.,
Department of Law and Public Safety

CSC Docket No. 2014-1744

Discrimination Appeal

ISSUED: JUL 18 2014 (DASV)

B.L., a former Sergeant with the Division of State Police, Department of Law and Public Safety, appeals the attached determination of the Counsel to the Attorney General, stating that the appellant failed to 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).¹

The appellant, an African American, filed a discrimination complaint alleging that J.L., a Caucasian and former Lieutenant² with the Division of State Police, Office of Professional Standards (OPS), discriminated against him based on race and age during an OPS investigation of the appellant for alleged misconduct. The appellant claimed that the OPS investigation was a “witch hunt” by J.L. and when a search of the appellant’s home was conducted, “his bedroom was left in disarray.” Additionally, a baseball hat from the former Negro League was “on the floor and had been stepped on,” and another hat from the Gouldtown Fire Hall, a community of African Americans, was “found on top of a pile of things.” The appellant indicated that “by singling out these two hats, it was racial in nature.” Moreover, the appellant asserted that the search of his home had “racial undertones” because neither of the two “minority Troopers” assigned to OPS was involved. The appellant

¹ The appellant’s unclassified appointment was discontinued effective October 23, 2012. The appointing authority indicates that, prior to that action, the appellant had been suspended without pay since December 14, 2006 for alleged misconduct.

² J.L. retired from State service effective January 1, 2014. Additionally, at the time of the complaint, J.L. was a Sergeant First Class.

also maintained that J.L. had discriminated against him based on age when J.L. stated that the appellant "should not get a pension . . . because [J.L.] could not receive a full State Police pension." In response, the appointing authority conducted an investigation into the appellant's claims of race discrimination, which included interviewing witnesses and reviewing pertinent documents. J.L. denied the allegations against him and indicated that he never saw the hats in question or heard anyone make a comment about them. Witnesses provided similar accounts that they did not see any hats or hear anyone say anything about the hats and the appellant's house was in disarray prior to the commencement of the search. Furthermore, the investigation did not corroborate that the OPS' search had "racial undertones." J.L. was not responsible for the assignment of the officers in the search and OPS wanted to limit the number of staff working on the investigation. Therefore, the appointing authority indicated that the investigation did not substantiate the appellant's claims. Regarding the appellant's allegation of age discrimination, the appointing authority advised the appellant by letter, dated February 22, 2012, that his claim would not be investigated because the appellant "provided no facts to support his interpretation that [J.L.'s] alleged statement was based on age."

On appeal to the Civil Service Commission (Commission), the appellant maintains that the appointing authority's determination "is incomplete and therefore unacceptable." He indicates that there was an allegation of age discrimination which was not addressed. Moreover, the appellant contends that subsequent to the conclusion of his discrimination investigation, he was able to obtain "full discovery" which led him to file a "Citizen Compliment/Complaint Form." The appellant submits a copy of this form, which he contends "provides more evidence of misconduct" on the part of J.L. In this form, the appellant asserts, among other things, that J.L. committed perjury before the grand jury, used a confidential informant whose statements were never challenged, and failed to conduct a fair and impartial investigation. It is noted that the appellant does not raise discriminatory claims in the complaint form. Further, the appellant states that he has not been interviewed regarding this additional information or received a disposition of his "2013-0506" complaint that he filed on October 4, 2013.

In response, the appointing authority initially states that the appellant was informed by letter, dated February 22, 2012, that his age discrimination claim would not be investigated. In that same letter, the appellant was provided with appeal rights information, but he did not file an appeal on that matter. As such, the appointing authority states that it will not address the issue further. Regarding the appellant's claims of race discrimination, the appointing authority reiterates the findings of the investigation. Of particular note, it asserts that witnesses indicated that the appellant's home was already in disarray prior to the commencement of the search, no witnesses saw the hats in question or heard comments about them, and J.L. did not treat the appellant differently because of his race. In addition, J.L.

denied having a role in making decisions on how the appellant's investigation was to be conducted or who was to be involved. J.L. was assigned to participate in the OPS investigation approximately four months after it began. Further, OPS command staff assigned J.L. to participate because of his familiarity with the area where the appellant's home was located. Moreover, the appointing authority indicates that one of the two "minority Troopers" assigned to OPS was K.M., an African American and a former Lieutenant.³ Since K.M. and the appellant are friends, command staff excluded K.M. from the OPS investigation to uphold the integrity of the investigation and not to place K.M. in an "uncomfortable position." Further, the other "minority Trooper" was not included because OPS wanted simply to limit the number of people working on the investigation due to its confidential nature. As to the appellant's "Citizen Compliment/Complaint Form" and "2013-0506" complaint, the appointing authority submits that the former provides information outside the scope of the Office of Equal Employment Opportunity (EEO) and "2013-0506" refers to a docket number of a complaint filed with OPS or the Office of Law Enforcement Professional Standards, formerly known as the Division of State Police Affairs. Moreover, it indicates that the "Citizen Compliment/Complaint Form" instructs the writer that the form may be submitted to either OPS or the Division of State Police Affairs.

It is noted that, despite the opportunity, the appellant did not further respond.

CONCLUSION

Initially, *N.J.A.C.* 4A:7-3.2(m) provides that a complainant who is in the career, unclassified or senior executive service, or who is an applicant for employment, who disagrees with the determination of the State agency head or designee, may submit a written appeal, within 20 days of the receipt of the final letter of determination from the State agency head or designee, to the Commission. The appellant did not file an appeal of the appointing authority's February 22, 2012 determination that it would not investigate his age discrimination claim. As such, any appeal at this juncture is untimely and cannot be considered. Further, the appellant does not provide argument or evidence whatsoever to demonstrate that the State Policy was violated in regard to his age discrimination claim.

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

³ K.M. retired from State service effective August 1, 2013.

information, liability for service in the Armed Forces of the United States, or disability. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4.*

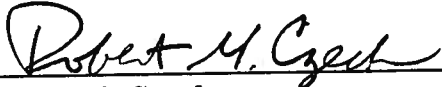
The Commission has conducted a review of the record and finds that a thorough investigation of the appellant's discrimination complaint based on race was conducted. The investigation included interviewing witnesses and reviewing pertinent documents. No testimony or evidence was found to corroborate the appellant's claims regarding his home or hats or that he was discriminated against based on his race. In addition, the investigation did not demonstrate that the OPS investigation had "racial undertones." Rather, the investigation revealed that J.L. did not have decision making authority regarding who would be involved in the appellant's OPS investigation and there were legitimate business reasons for the assignment of staff in the OPS investigation. The appellant does not provide any information on appeal to substantiate his case. As indicated by the appointing authority, the information contained in the "Citizen Compliment/Complaint Form" and the "2013-0506" complaint are outside the purview of its Office of EEO. As such, those matters are not properly before the Commission on appeal. Therefore, under these circumstances, the appellant has failed to meet his burden of proof. *See N.J.A.C. 4A:7-3.2(m)4.*

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 16TH DAY OF JULY, 2014



Robert M. Czech

Chairperson

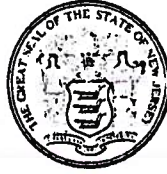
Civil Service Commission

**Inquiries
and
Correspondence**

**Henry Maurer
Director
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Attachment

**c: B.L.
Joanne Stipick
Mamta Patel
Joseph Gambino**



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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JOHN J. HOFFMAN
Acting Attorney General

*****PERSONAL & CONFIDENTIAL*****

November 22, 2013

Sergeant B [REDACTED] L [REDACTED]
[REDACTED]
[REDACTED]

Re: Discrimination Complaint; Office of EEO Case No. 11-223

Dear Sgt. L [REDACTED]:

The Attorney General's Office of Equal Employment Opportunity ("Office of EEO") investigated your allegation that Lieutenant J [REDACTED] L [REDACTED] discriminated against you based on race in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Anti-Discrimination Policy"). After interviewing the relevant witnesses and reviewing the pertinent documents, the Office of EEO did not substantiate your allegation. Thus, no further action will be taken.

Your allegations focused on the Office of Professional Standards' ("OPS") internal investigation into your alleged misconduct. You alleged that the OPS investigation, initiated in 2006, was a witch hunt conducted by L [REDACTED] based on your race. Specifically, you alleged that when the New Jersey State Police ("NJSP") executed a search warrant of your home, your "bedroom was left in disarray" and that one baseball hat from the Negro League Baseball was "on the floor and had been stepped on"; and another from the Gouldtown Fire Hall, a community of African-Americans- was "found on top of a pile of things." You claimed that "by singling out these two hats, it was racial in nature."



*****PERSONAL & CONFIDENTIAL*****

The Office of EEO investigation revealed that L. denied that he discriminated against you based on race during the search and stated that he never saw the hats in question or heard anything about them from anyone involved in the search. The investigation further found that witness testimony did not corroborate your allegation. The investigation found that L. was not the search supervisor and that the member who was assigned as supervisor stated the house was in disarray before the search commenced, that he had not observed any display of baseball hats in the room and that your residence was left in the same condition as it was prior to the search. The investigation found that other witnesses did not corroborate your allegation, and they consistently stated that they did not see any baseball caps or hear any derogatory remarks about baseball caps, including any that would implicate any protected category under the policy. Accordingly, the Office of EEO investigation did not substantiate your allegation.

You also alleged that the search of your home had "racial undertones" that you attributed to L. because while "there were two minority Troopers assigned to OPS, neither was included to participate in the raid and other aspects of the investigation." The investigation found that L. denied the allegation. In addition, the investigation revealed that OPS command staff—not L.—determined how the investigation would be handled and kept the number of people working the investigation as limited as possible due to its confidential nature. The investigation further revealed that L. was not the incident commander on the day of the search of your residence but was assigned as a participant and was not responsible for assigning members to handle the search. Accordingly, the Office of EEO investigation did not substantiate your allegation.

Please be advised that the State Anti-Discrimination Policy strictly prohibits retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides information in the course of an investigation into claims of discrimination or harassment in the workplace, or opposes a discriminatory practice. If you believe you have been the subject of retaliation, please contact the Office of EEO at (609) 633-2345.

Lastly, we remind you that all aspects of EEO complaints, investigations, and determinations, are considered highly sensitive and must be kept confidential. You should not discuss this matter with anyone else.



*****PERSONAL & CONFIDENTIAL*****

If you wish to appeal this determination, you must submit a written appeal to the (New Jersey Civil Service Commission, Division of Merit System Practices and Labor Relations, Written Record Appeals Unit, P. O. Box 312, Trenton, NJ 08625-0312,) postmarked or delivered within 20 days of your receipt of this determination. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Please be advised that there is a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

If you have any questions, please contact the Office of EEO at (609) 633-2345. Thank you.

Very truly yours,



Deborah R. Edwards
Counsel to the Attorney General

DRE/KAD:mmb

- c: Joanne Stipick, Director, Office of EEO
Mamta Patel, Director, EEO/AA Division, CSC
Colonel Joseph R. Fuentes, Superintendent, NJSP
Capt. Charles Lowrey, Bureau Chief, NJSP EEO Bureau
Christina M. Glogoff, Director, Law Enforcement Professional Standards

