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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of E.L., Department of Human Services

CSC Docket No. 2014-2424

Request for Reconsideration

ISSUED: FEB - 9 2015 (SLD)

E.L., a Training and Staff Development Officer, Department of Human Services (DHS), requests reconsideration of the attached final administrative decision, rendered on December 18, 2013, which denied his appeal of the determination of the Chief of Staff of the Department of Children and Families, stating that the petitioner failed to present sufficient evidence to support a finding that he had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The myriad allegations are fully explained in the attached decision which is incorporated herein. The petitioner, a Hispanic male, filed a complaint with the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA), alleging that former Chief of Staff D.Z., a Caucasian female, had discriminated against him based on his race and ethnicity in violation of the State Policy. In particular, he asserted that A.P., a Caucasian female was promoted due to her race; C.M., a Caucasian female, was promoted despite not being qualified for a promotion to Manager 3, Human Resources; and that G.B., the former Director of Affirmative Action, a Hispanic male, was the lowest paid Director prior to his retirement. Additionally, the petitioner claimed that because of his race he was not promoted to the Director of Training Unit nor was he paid for performing the same duties as K.R.M., an African-American female and the previous Director.

In its December 18, 2013 decision, the Commission initially found that in light of the voluminous and detailed submissions received from the parties, particularly the thorough and detailed summary of the investigation prepared by

the EEO/AA, it was not necessary to compel production of the investigation report in this matter. Additionally, the Commission noted that although it was troubled by the year and one-half delay in issuing the determination letter, that delay was not a sufficient reason for upholding the petitioner's complaint. In this regard, the petitioner had presented no evidence that he was unreasonably prejudiced by the delay, nor had he established that the investigation was not thorough and complete. With regard to the petitioner's claim that his witnesses were not interviewed, the Commission noted that other than restating his allegations, he failed to indicate the names of the witnesses that were not interviewed, nor did he indicate what evidence those witnesses would supply.

With regard to the petitioner's allegations concerning C.M., the Commission did not agree with the petitioner's allegation that C.M. could have only been admitted to the examination for Manager 3, Human Resources if she was provided with preferential treatment since she did not have any permanent status nor did she possess any applicable experience. In this regard, agency records indicated that at the time C.M. applied for the Manager 3, Human Resources (PS3066K) examination, she was serving provisionally in the title of Manager 3, Human Resources. However, because she had requested, and been approved for leaves of absence while serving in the unclassified title of Confidential Assistant, she retained her underlying permanent status stemming back to her service with the former Department of Personnel (DOP), and thus met the announced requirement of possessing an aggregate of one year of continuous permanent service. *See N.J.A.C.* 4A:6-1.10. Moreover, despite the petitioner's assertion to the contrary, the former DOP would qualify as a large public or private agency and any of C.M.'s experience that "involved the administration of personnel functions" would be considered applicable experience.

In the petitioner's February 28, 2014 request for reconsideration, he maintains that "anyone without a pre-disposition in this matter would have found the unedited evidence he provided to be truthful and persuasive" and thus, he argues that the Commission made several errors in denying his discrimination appeal. The petitioner maintains that despite the Commission's statements to the contrary, he provided specific evidence of the differential treatment he received due to his race. Specifically, the petitioner maintains that the Commission ignored its own prior decisions, in finding C.M. not eligible for the Manager 1, Human Resources examination in 2006.[1] By ignoring its determination that she was not

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[1] In *In the Matter of C.M.* (CSC, decided April 11, 2007), the Commission denied C.M. request for reconsideration of its December 6, 2006 decision finding that she did not meet the experience requirements for the promotional examination for Manager 1, Human Resources (PS0471K), Department of Human Services. In this regard, the Commission noted that although she possessed three years and seven months of applicable experience as of the May 22, 2006 closing date, based on her provisional service in the title under test and her service in the unclassified title of Confidential Assistant, her experience in the Test Development Specialist title series was not considered applicable experience.

eligible for the lower title, the Commission erred in finding that she was properly admitted to the examination for Manager 3, Human Resources in 2011. Moreover, the petitioner asserts that the only way for C.M. to be admitted to the Manager 3, Human Resources examination was to accept her out-of-title duties as a Confidential Assistant, and if that was done without going to the Commission, then C.M. was given preferential treatment. The petitioner also questions who the "former direct supervisor" in the Commission's decision refers to since his former direct supervisor, the Assistant Commissioner of DHS Human Resources, would never have placed him in the position, and then state that he did not possess the requisite leadership skills for the Director position. The petitioner additionally asserts that he has been clear and concise in his arguments that the functional title of Director and the salary of a Director were separate and distinct issues, both of which he has been denied. He maintains that all the African-American and Caucasian employees heading the Office of Human Resource Operational Excellence were granted both the functional title of Director and compensated as a Director, yet he was not. In support, the petitioner submits a March 24, 2014 "Job Opportunity" posting (job posting) for Government Representative 1, "Functional Title: Director of Workforce Development and Training." The petitioner maintains that DHS posted this opening for a "functional title" with the approval of this agency and therefore, the Commission's statement that the functional title of Director did not have a particular salary range was untrue, since the position's salary is being set at the level of a Government Representative 1. The petitioner also maintains that this job posting establishes that the Commission erred in referring to the Office of Workforce Development and Training as a Division. The petitioner asserts that this job posting is proof of the continued discriminatory practices that DHS and the Commission have taken against him.

The petitioner also maintains that the Commission failed to address the allegation that the delay in this matter established gross negligence in the handling of his complaint. The petitioner further disputes that he implied that such a finding required his appeal be granted. The petitioner also maintains that the Commission never noted that the delay in this matter was 467 days.[2] Finally, with regard to the timeliness of his instant request for reconsideration, the petitioner merely asserts that he was unaware of any "timeframe restrictions," and therefore he "apologizes."

Despite being provided the opportunity, DHS did not provide any arguments or documentation in response to the petitioner's request for reconsideration.

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[2] Although the petitioner also references an earlier complaint, and the EEO/AA's determination to dismiss that mater was more than 500 days after he filed the complaint, there is no record that the petitioner appealed that determination to the Commission, and thus, it will not be addressed in this matter as it is untimely.

CONCLUSION

Initially, *N.J.A.C.* 4A:2-1.6(a) provides that requests for reconsideration must be made within 45 days of receipt of a decision. Although the petitioner acknowledges that his request for reconsideration was untimely filed, he asserts that he was unaware of any time frame for filing. The purpose of time limitations is not to eliminate or curtail the rights of petitioners, but to establish a threshold of finality. In the instant case, the petitioner's February 28, 2014 request for reconsideration was clearly not filed within the required timeframe. However, despite the untimeliness of the petitioner's request for reconsideration, the Commission will address the merits of this matter.

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. Applying that standard and after a review of the record in the instant matter, reconsideration is not justified. In this regard, the petitioner has failed to provide any documentation which establishes that the Commission's decision was contrary to the evidence presented. Instead, the petitioner merely reiterates his prior arguments and claims that the Commission made several errors by not accepting his evidence as sufficient to establish he was discriminated against in violation of the State Policy. The Commission disagrees.

Initially, with regard to the petitioner's questioning of the "former direct supervisor" referenced in the Commission's decision who stated that he did not possess the requisite leadership skills for the Director position, the Commission notes that it did make a typographical error. In its prior decision, the Commission noted that the EEO/AA stated that:

> Moreover, both R.V., D.Z. *and the petitioner's former direct supervisor* agreed that the petitioner did not possess the requisite leadership skills for the Director's position, even though he was good at the day to day office management (emphasis added).

However, the EEO/AA's submission actually referred to R.V. as the petitioner's former direct supervisor, and not as a third individual. This error does not change the Commission's finding that the investigation had determined that the petitioner was not deemed to have requisite skills for the Director's position. Moreover, since the position of Director was not an official Civil Service title, but merely a functional title, the Commission does not have the jurisdiction to review whether or not the petitioner met the requirements for the title of Director, since there are no Civil Service requirements for the position. Rather, the Commission may only

review whether or not an individual meets the requirements for the competitive title the individual is actually serving in. For example, the job posting submitted by the petitioner indicates that the title the appointed individual would be serving in is Government Representative 1, with the functional title of Director. However, the petitioner incorrectly asserts that the Commission approved this job posting. In this regard, a job posting announces a vacancy which is to be filled, usually as a provisional appointment, or in this case, as an unclassified appointment. This agency only issues Examination Announcements for regular appointments to a competitive title. Additionally, the petitioner is incorrect in alleging that the job posting establishes that the Commission erred in finding that there was no established salary range for the functional title of Director, since the job posting make it clear that it is being filled as a Government Representative 1. Most Civil Service titles are set at a particular salary range. However, there is no corresponding salary range for the Government Representative 1 title.[3] Therefore, the Commission did not err in finding that the petitioner had failed to establish that he was discriminated against in regard to his salary.

The Commission also does not agree with the petitioner's claim that it ignored its prior decision in *In the Matter of C.M., supra.* In that matter, C.M.'s request for reconsideration that she did not meet the experience requirements for the promotional examination for Manager 1, Human Resources (PS0471K), Department of Human Services, was denied. Specifically, that decision noted that C.M. possessed three years and seven months of applicable experience as of the May 22, 2006 closing date, based on her provisional service in the title under test and her service in the unclassified title of Confidential Assistant, however, her experience in the Test Development Specialist title series was not considered applicable experience. In 2011, C.M. was admitted to an examination for Manager 3, Human Resources. Since each examination is treated as a discrete announcement, with requirements having to be met by the announced closing date for that particular announcement, an individual who was deemed ineligible for a lower title can be deemed eligible for a higher title at a later date so long as he or she meets the eligibility requirement at that time.[4] Moreover, although the petitioner asserts that C.M.'s experience as a Confidential Assistant should have been deemed out-of-title and thus, ineligible to be considered for the subject examination without being treated more favorably than him, the Commission does not agree. C.M.'s experience as a Confidential Assistant was deemed applicable experience and not out-of-title, and thus, no Commission action was needed to accept it.

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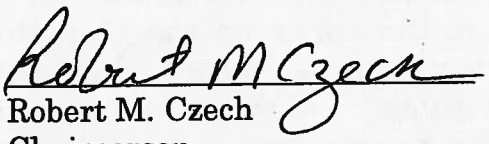
[3] That title is designated as X98, which, per the State Classification Plan, is considered a no-range exempt managerial-level title. The only limitation on the salaries for employees in this title is that it not exceed a certain level. In other words, an appointing authority has the discretion to compensate employees in this title at any salary up to the established limit.

[4] As of the June 21, 2011 closing date for Manager 3, Human Resources, C.M. possessed eight years and six months of applicable experience. Only seven years of experience, *inter alia*, was required.

Finally, the Commission clearly addressed the petitioner's argument regarding the delay in DHS' determination in its prior decision, finding that he was not significantly prejudiced by the delay. Accordingly, the petitioner has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF FEBRUARY, 2015



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Attachment

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Mamta Patel
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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of E.L., Department of Human Services

CSC Docket No. 2013-3003

Discrimination Appeal

ISSUED: DEC 23 2013 (SLD)

E.L., a Training and Staff Development Officer, Department of Human Services (DHS), appeals the attached determination of the Chief of Staff, stating that the appellant failed to present sufficient evidence to support a finding that he had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a Hispanic male, filed a complaint[1] with the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA), alleging that former Chief of Staff D.Z., a Caucasian female, had discriminated against him based on his race and ethnicity in violation of the State Policy. Specifically, the appellant alleged that under D.Z., Hispanic and other minorities were not given the same opportunity for promotions in the Central Office of DHS. In this regard, he asserted that A.P., a Caucasian female was promoted due to her race; C.M., a Caucasian female, was promoted, despite not being qualified for a promotion to Manager 3, Human Resources; and that G.B., the former Director of Affirmative Action, a Hispanic male, was the lowest paid Director prior to his retirement. Additionally, the appellant claimed that he was not promoted to the Director of Training Unit because of his race. Specifically, he asserted that in 2006, K.R.M., an African-American female and former Assistant Commissioner, appointed him to the head of the Training Unit. However, he was never given the title of Director, nor paid for

[1] The appellant initially related his allegation to R.V., Assistant Commissioner, on October 17, 2011. R.V. then referred the matter to DHS' EEO/AA.

the work he performed, even though he performed the same duties as K.R.M., the previous Director.

Initially, it is noted that because the appellant's complaint indicated that there was a possible conflict of interest, the matter was referred to the Division of Equal Employment and Affirmative Action (EEO/AA) which had the Department of Children and Families, Office of Equal Employment Opportunity and Affirmative Action (DCF) conduct the investigation, which was then finalized by the EEO/AA. The investigation determined that there was no probable cause to substantiate a violation of the State Policy on the basis of the appellant's race or ethnicity.

Specifically, with regard to the appellant's allegations concerning him not being promoted to the title of Director, the investigation revealed that he was not promoted because he did not meet the requirements for the position. In this regard, it noted that this agency had reviewed the appellant's credentials and had determined that he did not meet the qualifications necessary for the position. Moreover, the investigation revealed that the appellant's supervisor's stated that while he should be promoted, the level should not be that of Director. Additionally, the investigation indicated that the appellant was promoted to the title of Training and Staff Development Officer (salary range S-29), and that at the time of the investigation, his salary was approximately $99,618.[2] Despite the appellant's assertions to the contrary, the investigation revealed that K.R.M. earned approximately $10,000 less than the appellant when she was the Director of the unit. The investigation also revealed that there was no evidence to support the appellant's allegation that D.Z. ensured his promotion took longer than other non-minority appointments. It noted that all promotions required approval from this agency, as well as the Governor's Office, and D.Z. had no control over how long it took the other agencies to approve such actions. Furthermore, the investigation did not support the appellant's allegation that Hispanics and other minorities have not been promoted in the Central Office due to D.Z.'s "prejudice." In this regard, the investigation revealed that there have been several minority promotions at the Central Office, including to the titles of Assistant Commissioner and Government Representative, as well as other manager positions. Moreover, D.Z. stated that DHS was working toward sustaining a diverse group of employees, and she herself had made efforts to promote Hispanic employees. For example, she indicated that she had sought to promote J.G. to a management position as she believed that he had been working out-of-title performing higher level duties.

With regard to the appellant's allegations concerning A.P. and C.M.'s promotions, the investigation revealed that A.P. was selected after she applied and

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[2] The appellant's current salary is $104,070.18.

interviewed for the announced position.[3] Moreover, the investigation revealed that the other applicant, P.A., withdrew her application for the position. The investigation also revealed that the subject position was reevaluated from salary range M-36 to M-35, prior to A.P.'s appointment. With regard to the appellant's allegations concerning C.M., the investigation revealed that C.M.'s qualifications were reviewed by this agency, and it was determined that she met the requirements for the position. In this regard, the investigation revealed that based on C.M.'s prior employment with the Department of Personnel, her experience as a Confidential Assistant with DHS, and her possession of a Master's degree, it was determined that she met the announced requirements.[4]

Additionally, the investigation did not support the appellant's allegations that G.B.'s salary was less than other Directors because G.B. was Hispanic. Rather, the investigation revealed that G.B.'s salary, as the Director of Diversity and Inclusions, was approximately $102,000. However, the salary of his counterpart in the EEO Office, who was a Caucasian male, was $90,725.73. Moreover, after G.B.'s retirement, the two divisions were combined into the EEO/AA, and the salary of current director, a Caucasian male, is $91,781.49. Based on the foregoing, the EEO/AA concluded that the investigation did not substantiate the appellant's claim that D.Z. discriminated against him and others due to their race or ethnicity in violation of the State Policy.

On appeal, the appellant initially asserts that he did not receive a determination letter until 467 days after his initial complaint, in violation of *N.J.A.C.* 4A:7-3.2(l)2 which requires that the final determination letter be issued no later than 120 days after the initial complaint, which he claims raises a "red flag." The appellant also argues that although this matter was a "conflict of interest" case, it is unclear who "adopted the findings and recommendations" and when it

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[3] Agency records reveal that the promotional examination for the title of Director, Employee Relations, Human Services (PS8067K), was announced with a closing date of March 21, 2012. The resulting eligible list promulgated on February 7, 2013 and expires on February 6, 2016, and listed A.P. as the first-ranked eligible and P.A. as the second-ranked eligible.

[4] Agency records reveal that the promotional examination for the title of Manager 3, Human Resources (PS3066K), was announced with the closing date of June 21, 2011. The examination was open to applicants with the aggregate of one year of permanent continuous permanent service in the title of Manager 2, Human Resources, or to who applicants who possessed a Bachelor's degree and seven years of professional experience in work involving the administration of personnel functions for a large public or private agency, three years of which shall have been in a supervisory capacity supervising second-line supervisors. This experience, as a primary functions, does not include routine processing of personnel transactions, completion and checking of forms, filing or data entry. It was noted that possession of a Master's degree in Public, Business, Social Work or Personnel Administration, Psychology or Guidance and Counseling could be substituted for one year of the non-supervisory experience. Two applicants, including C.M., were admitted to the examination. On the resulting eligible list which promulgated December 1, 2011 and expired November 30, 2013, C.M. was listed as the first-ranked eligible.

"stopped" being a conflict of interest matter. Furthermore, the appellant requests a complete copy of the investigation report.

Additionally, the appellant asserts that the EEO/AA did not investigate and/or address all of his allegations, nor did it interview any of his witnesses. Rather, the EEO/AA's determination used "convoluted responses" to justify the actions, without any evidence to support DHS's allegations. He reiterates that he performed all the duties and job responsibilities of the previous Director, yet he was denied the title and the salary for a Director position. In this regard, he asserts that K.R.M. "appointed" him to the head of the Office of Human Resources Operational Excellence (OHROE), in August 2006, to report directly to her. However, although the previous Director, K.R.M. was in a title with a salary range 32 or 34, his title was only a salary range 26. Moreover, he asserts that his job duties and responsibilities clearly reflected "director level responsibility" just like his predecessor, and there was, therefore, no reason not to promote him. Additionally, he asserts that despite the EEO/AA's assertion to the contrary, it failed to support its finding that he was not qualified for the position and that he lacked the necessary leadership qualities for the position. The appellant asserts that his 21 years of State service includes 11 years of supervisory experience and clearly evidences the necessary leadership qualities and qualifications for the position. Furthermore, the appellant asserts that there are no qualifications for the title of "Director" since it is only a functional title. In this regard, he notes that K.R.M.'s permanent titles, while serving as "Director" were Manager 2, Human Resources and Manager 3, Human Resources; and that the previous "Director's" permanent title was Senior Executive Service. Further, R.V., an Assistant Commissioner who is an African-American female, related to him conversations with D.Z. that clearly demonstrate D.Z's bias, by referring to him as "him," which may be used as a way to devalue a person, which is common for people who are biased. He also asserts that, despite being in the position for two years, he was instructed not to use the title of "Acting Director," yet other non-Hispanic individuals were appointed to "Acting Director" and Director, with much less time in the relevant positions. Furthermore, he asserts that D.Z. determined that his title would be a range 29 title, despite D.Z. not being a classification expert, nor did D.Z. have a desk audit performed. The appellant claims that the only reason D.Z. limited his promotion was because of her "own personal discriminatory and prejudicial attitudes towards non-whites." The appellant also argues that all of the minority employees in management and administration positions were in place prior to D.Z.'s appointment and that since D.Z.'s appointment no additional minority employees were brought into the Central Office until a year after D.Z.'s start date. The appellant also asserts that although D.Z. stated that she attempted to get more compensation for a Hispanic employee, she only provided one example, and it was not for a management position. Finally, he notes that in 2011, 10 appointments were made, and all were Caucasian candidates.

The appellant also argues that despite performing appropriate Director duties since 2006 he was not compensated accordingly. In this regard, he notes that although he received retroactive pay in 2010, the amount he received was not sufficient, since it only worked out to be approximately $1,333 per year. Moreover, even with the retroactive pay, his salary was still $1,000 less than the Caucasian male who was the Director in 2002, and despite the EEO/AA's assertion to the contrary, he did not earn $10,000 more than K.R.M. Rather, in 2006 when he began performing the duties of the Director, he earned $73,474, while K.R.M.'s salary when she left the Director position in 2006 was $96,700. Additionally, the appellant asserts that his "successor," L.H.C., an African-American female, is earning $111,171 as the Director.[5] Furthermore, the appellant argues that because of the length of time his promotion took, he requested that he be placed on step nine of salary range S29. However, his request was denied. Consequently, he asserts that his title should be "reclassified" from salary range S-29 to salary range S-31, and that he be placed on step 10 of salary range S-31. Finally, he requests the lump sum amount of $120,584 for the time he served uncompensated in the Director position.

With regard to his allegations concerning A.P., he maintains that his allegations were intentionally misrepresented to blur the issue. In the regard, he maintains that he questioned how the Director of Employee Relations, a Caucasian male, was able to name A.P. as an Acting Director to be his successor on March 31, 2011, when the position was only posted on March 23, 2011. The appellant argues that there was no explanation provided for why it took only 20 weeks to appoint A.P., yet his promotion took five years.

With regard to the appellant's allegations concerning C.M., he asserts that he did not challenge C.M.'s ability to perform the duties, he questioned how she was appointed since she did not meet the requirements for the title of Manager 3, Human Resources. In this regard, he asserts that the position was only open to candidates who were permanent in the titles of Manager 1 or 2, Human Resources. However, C.M. never served in either title. Moreover, he maintains that C.M.'s possession of a Master's degree is irrelevant since the position does not require such a degree. Finally, he questions how C.M.'s experience as a Confidential Assistant could have been accepted without the Civil Service Commission's (Commission) approval since that experience would be "out-of-title," and he was denied the title of Manager 1, Human Resources, since "out-of-title" experience does not count. Therefore, he asserts that it is clear that C.M. received preferential treatment because she is a Caucasian female.

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[5] Agency records indicate that L.H.C. was appointed to the unclassified title of Assistant Division Director with the Division of Mental Health, DHS, effective April 5, 2005, and her salary was increased to $123,524 effective July 7, 2007. She was appointed to the unclassified title of Government Representative 1 with the Central Office, DHS, effective November 19, 2011, with the salary of $111,171.68.

Finally, with regard to his allegations concerning G.B., the appellant asserts that he never stated that G.B. was the lowest paid Director. Moreover, he reiterates that the Caucasian male who because the Director of the EEO/AA in 2008 was provided a $15,000 salary increase, and was made Director without ever having served as a Director. However, the appellant asserts that despite his two and one-half years of performing the duties of a Director, he was not provided a comparable salary or title increase. The appellant also asserts that although he performed the duties of a Director, a number of the employees in the office earned the same or significantly more than he did. For example, he notes that a Caucasian male in the title of Chief Clinical Psychologist earned significantly more than he did and the appellant's Secretary earned the same as him.

In response, the EEO/AA argues that the appellant has not satisfied his burden of proof in the instant matter, and thus his appeal should be dismissed. Moreover, the EEO/AA asserts that despite the appellant's arguments to the contrary, it investigated the allegations in the e-mails from DHS and the appellant. In this regard, after the appellant's allegations were referred to DHS' EEO/AA, the former director, T.B., summarized the appellant's allegations in an e-mail, which was sent to the appellant and R.V., to confirm the content of the allegations, and to advise the appellant that the matter was being referred to the EEO/AA since he named the Chief of Staff as a respondent. In response, the appellant further clarified his allegations. For example, he questioned "how" C.M. was qualified as a Confidential Assistant to be appointed to the title of Manager 3, Human Resources, when she never served in either a Manager 1 or 2, Human Resources titles. Furthermore, although the appellant now claims that the EEO/AA failed to investigate discriminatory comments made by D.Z. and R.V., it notes that the appellant's complaint did not list any discriminatory comments or allegations concerning discriminatory comments.

The EEO/AA asserts that DCF's investigation was thorough and complete, as it interviewed relevant witnesses and reviewed various documents. However, the appellant's allegations could not be substantiated, and therefore, his appeal should be dismissed. Additionally, although the appellant maintains that his witnesses were not interviewed, the EEO/AA notes that the witnesses it believed to have the most relevant knowledge of the allegations were interviewed.

The EEO/AA further maintains that the investigation did not support the appellant's allegation that, despite K.R.M. appointing him to the head of OHROE, he was not provided the commensurate salary or allowed to use the title of Director because of D.Z.'s discrimination against him. In this regard, the investigation revealed that neither D.Z. nor R.V. were aware that K.R.M. had indicated to the appellant that he would be promoted to the title of Director of OHROE. Moreover, the investigation did not reveal any evidence that K.R.M. intended to promote the appellant. Upon K.R.M.'s departure from DHS, R.V. assumed oversight of OHROE,

and she knew that the Civil Service title of Director was not available for use in OHROE, since the title of Director is reserved for employees who are charged with overseeing entire divisions, and not simply an office within a division. Moreover, both R.V., D.Z. and the appellant's former direct supervisor agreed that the appellant did not possess the requisite leadership skills for the Director's position, even though he was good at the day to day office management. Therefore, R.V. had initially requested that this agency review the appellant's credentials to determine his eligibility for the title of Manager 1, Human Resources.[6] However, this agency determined that the appellant did not meet the qualifications for the title of Manager 1, Human Resources. Specifically, a March 4, 2009 letter indicated that although he possessed two years and eight months of out-of-title general and supervisory experience, the position required possession of six years professional experience in a personnel or human resource management program (which does not include as a primary function routine processing of personnel transactions, completion and checking of forms, filing or data entry), three years of which shall have been in a supervisory capacity. Thereafter, the appellant was promoted to the title of Training and Staff Development Officer, and he received lump sum payments for two years of retroactive pay, which R.V. strongly advocated for. R.V. also indicated that the appellant would not have been eligible for an equivalent salary increase in the Director title, and he was better off in a supervisory title as he would then still be entitled to the ongoing salary increases. D.Z. confirmed that she asked, through R.V., that the appellant stop using the Acting Director title since she believed it was a misrepresentation since he was not performing the duties and responsibilities of a Director. D.Z. also indicated that she asked R.V. to speak with the appellant, to ensure he understood the expectations of the Director's title. In this regard, she indicated that some employees want a particular title because they believe that they are "next in line," without necessarily being qualified to perform the appropriate duties. Moreover, D.Z. indicated that the appellant was not performing the duties and responsibilities of a Director, *i.e.*, planning, program development or creating policies, nor did he exhibit leadership qualities in those areas. Based on the foregoing, the EEO/AA determined that the appellant was placed in the highest title for which he qualified and which was appropriate for the duties he performed. The investigation failed to substantiate that D.Z. failed to promote or pay the appellant due to his race or ethnicity.

With regard to the length of time it took for his promotion, the investigation revealed that length of time to approve a promotion varied since they were reviewed by several staff members at the DHS, Governor's Office and this agency. Moreover, it noted that D.Z. was not the ultimate decision maker for promotions nor did she even make the initial determination for promotions. Rather, R.V. would have made the initial determination to promote the appellant, D.Z. would have at some point been involved, but that the Commissioner of DHS makes the ultimate decision.

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[6] K.R.M.'s title was Manager 2, Human Resources during her tenure in the OHROE.

Accordingly, the EEO/AA asserts that the investigation did not substantiate that D.Z. failed to promote or compensate the appellant due to his race and/or ethnicity.

Additionally, the EEO/AA asserts that there is no indication that L.H.C. was hired because of her race. The EEO/AA asserts although L.H.C. may be of a different national origin than the appellant (L.H.C. is Puerto Rican), they are not similarly situated. Specifically, it asserts that L.H.C. possesses significantly more experience than the appellant to serve as the Workforce Development Coordinator and to perform the required duties. In this regard, it notes that L.H.C. had been appointed as the Assistant Division Director, Division of Mental Health Services, effective April 5, 2004. During that time, L.H.C. was directly responsible for the oversight and management of a specialist State forensic psychiatric hospital; developed, directed and initiated a Workforce Development Plan for the Division of Mental Health Services; and retained a significant leadership role during the transition process of another psychiatric hospital to a new facility, which included planning of staff orientation and training. The EEO/AA asserts that the investigation revealed that the decision to hire L.H.C. was based, in part, on her extensive leadership experience.

Moreover, the investigation did not support the appellant's allegation that A.P. was appointed to the title of Director of the Office of Cooperative Labor Relations instead of P.A., an African-American female, because of A.P.'s race. Initially, the EEO/AA notes that the investigation revealed that P.A. had withdrawn her application for the position. Moreover, although true that A.P. was appointed to a salary range M-35 title, the investigation revealed that the previous Director had been in a salary range M-36 title. Consequently, the investigation did not reveal that the position was "created" for A.P. Furthermore, R.V. indicated that the vacancy announcement had been posted as a State-wide opening, and DHS had received several applications from both internal and external candidates. After interviews by a four-person panel, A.P. was selected for the position. The investigation also did not support the appellant's allegations regarding C.M. Rather, the investigation revealed that C.M.'s experience with this agency had been considered in determining her eligibility for the position.

The EEO/AA also argues that despite the appellant's assertions to the contrary, there was no evidence to support his allegation that G.B. was the lowest paid Director due to his race. Moreover, the investigation revealed that not only was G.B.'s salary more than his predecessor, but that G.B.'s successor's salary, a Caucasian male, is significantly less than G.B.'s salary. Furthermore, the investigation revealed that because DHS was one of the only State departments that had separate offices for EEO and AA, the decision was made to consolidate the two offices. Therefore, when positions in AA became vacant, those positions were not filled. Finally, the EEO/AA maintains that there is no evidence to support the appellant's allegations that Hispanic and other minority employees were

discriminated against in employment decisions. In this regard, the investigation revealed that between 2006 and 2010, Hispanic and other minorities were promoted to administrator and professional positions within DHS.

Furthermore, the EEO/AA asserts that any delay in issuing the appellant's determination letter did not affect the merits of the case. Moreover, it notes that the EEO/AA was first advised of the appellant's allegations on October 26, 2011 and received clarification of those allegations on October 27, 2011. The appellant was interviewed in January 2012 and that upon conclusion of the investigation, the matter was returned to DHS to issue a determination. Finally, the EEO/AA argues that although the appellant has requested a copy of the investigation report, the initial determination letter and its response to his appeal provided sufficient information.

In response, the appellant reiterates his arguments. The appellant also asserts that R.V.'s statement that the Civil Service title of "Director" is reserved for persons overseeing an entire division is "ridiculous and unfounded." Moreover, he asserts that if that is true, then the reason given for not promoting him to Director, *i.e.*, that his strengths were elsewhere, was pretextual. Additionally, the appellant maintains that R.V.'s statement that he was better off in a supervisor title to obtain ongoing salary increments is disingenuous since she had no way of knowing that the Governor would place a hold on salary increases for non-union titles. Furthermore, the appellant asserts that D.Z. and R.V.'s statements to the EEO/AA are further evidence of their discriminatory and prejudicial attitudes. For example, he cites D.Z.'s use of the phrase "some people," which the appellant claims is used by prejudiced people as a version of "you people." He also asserts that D.Z.'s use of the phrase "entitled to" clearly demonstrates her bias as the phrase is used to demonstrate the belief that certain people want a handout and not something they have earned. The appellant argues that he has earned the position since he was heading OHROE without any issues and he possessed approximately 16 years of supervisory experience and 11 years of training experience. Therefore, D.Z.'s comment was completely audacious and devalued him, especially considering he had to watch Caucasian employees who were hired and promoted into administrative/director positions, some without any State service. The appellant maintains that L.H.C.'s appointment with a salary of $111,171 supports his assertion that his lower salary, for performing the same duties, is clear evidence of discrimination.

The appellant also reiterates that C.M. did not meet the requirements for the position of Manager 3, Human Resources. In support, he submits the announcement for the position. The appellant argues that since C.M. was in an unclassified title, she cannot be considered to have permanent service. Moreover, he maintains that her service with this agency cannot be considered applicable experience since at the time this agency only had approximately 300 employees and

therefore is not a large public or private agency. The appellant questions how C.M.'s experience was considered applicable, yet his 10 years experience as a Supervising Family Services Specialist 2 was not considered applicable for the title Manager 1, Human Resources. The appellant asserts that unless C.M.'s qualifications went before the Commission to allow her to use out-of-title experience, then she received preferential treatment.

The appellant also reiterates that Hispanic employees are discriminated against in the promotional process, especially in executive level promotions. For example, he notes that there are only two Hispanic Directors in DHS. The appellant argues that the fact that the majority of the upper-level appointments made by this administration were of Caucasian individuals, it clearly demonstrates the racism of those making the appointments. Finally, the appellant reiterates his request for the complete investigation report. In this regard, he asserts that the EEO/AA's determination letter and response demonstrate internal contradiction and creative editing and therefore lack credibility and integrity.

CONCLUSION

Initially, the appellant has repeatedly requested access to the investigation report prepared in relation to the instant matter. The final determination regarding the necessity of disclosure of the investigation report was deferred, pending receipt of all arguments and documentation from the parties. In light of the voluminous and detailed submissions received from the parties, particularly the thorough and detailed summary of the investigation prepared by the EEO/AA, the Commission does not find it necessary to compel production of the investigation report in this matter. The Commission is satisfied that the appellant has had a full opportunity to present evidence and arguments on his behalf, and the Commission has a complete record before it upon which to render a fair decision on the merits of the appellant's complaint. *See In the Matter of Juliann LoStocco, Department of Law and Public Safety,* Docket No. A-0702-03T5 (App. Div. October 17, 2005); *In the Matter of Salvatore Maggio* (MSB, decided March 24, 2004).

Additionally, the Commission does not find that the delay in issuing the determination letter is a sufficient reason for upholding the appellant's complaint. *See In the Matter of Karen Kritz* (MSB, decided January 25, 2006) (There is no provision in the State Policy mandating that an appellant's complaint be upheld if procedural requirements are not fulfilled). Although the Commission is very concerned with the year and one-half delay between the filing of the complaint and the issuance of a determination letter, the appellant has presented no evidence that he was unreasonably prejudiced by the delay, nor, as indicated below, has he established that the investigation was not thorough and complete. *N.J.A.C.* 4A:7-3.2(k)1 provides that investigations shall be completed and a final letter of determination issued within 120 days after the initial intake of the complaint. In

the instant matter, the EEO/AA ignored the timeliness issue raised by the appellant on appeal, other than to simply restate the dates the complaint was received and the appellant was interviewed. However, it failed to provide any explanation as to why the determination letter was not issued within 120 days of the initial intake of the complaint. Therefore, no explanation for the delay is present in the record. The EEO/AA should be aware that the Commission takes the timeliness issue seriously, and that future egregious violations, as in the instant matter, may result in fines or other appropriate action. *See N.J.A.C.* 4A:10-2.1.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. The EEO/AA appropriately analyzed the available documents in investigating the appellant's complaints and concluded that there was no violation of the State Policy. The appellant argues that the EEO/AA's investigation was not sufficient since it failed to interview all of his witnesses. However, other than restating his allegations, the appellant has failed to indicate the names of the witnesses that were not interviewed, nor does he indicate what evidence those witnesses would supply. Moreover, the appellant has failed to present any evidence that would establish that the EEO/AA's determination was incorrect. In this regard, the appellant argues that the lack of minorities, especially Hispanic employees, in management positions, and A.P. and C.M.'s appointments are proof of D.Z. and DHS's discrimination and bias against minorities. However, the Commission does not agree. For example, both A.P. and C.M. were appointed to their titles after applying for and passing the relevant examinations. Moreover, both A.P. and C.M. were ranked number one on their respective eligible lists. The Commission also does not agree with the appellant that C.M. could have only been admitted to the examination for Manager 3, Human Resources if she was provided with preferential treatment since she did not have any permanent status nor did she possess any applicable experience. In this regard, agency records indicate that at the time C.M. applied for the Manager 3, Human Resources (PS3066K) examination, she was serving provisionally in the title of Manager 3, Human Resources. However, because she had requested, and been approved for leaves of absence while serving in the unclassified title of Confidential Assistant, she retained her underlying permanent status stemming back to her service with the former Department of Personnel (DOP), and thus met the announced requirement of possessing an aggregate of one year of continuous permanent service. *See N.J.A.C.* 4A:6-1.10. Moreover, despite the appellant's assertion to the contrary, the former DOP would qualify as a large public or private agency and any of C.M.'s experience that "involved the administration of personnel functions" would be considered applicable experience.

Additionally, the Commission notes that R.V. correctly noted that there is no Civil Service title of Director for the OHROE. Rather, for Civil Service purposes, in

State government, the title of Director is usually reserved for positions that head a particular Division. Although departments may utilize the functional title of Director, which it appears is the case for OHROE, individuals who are provided with the functional title of Director are in other Civil Service titles. Therefore, the appellant incorrectly argues that the position of Director at OHROE is at a particular salary range. Moreover, the EEO/AA indicates that the attempts were made to place the appellant in a higher title. However, as acknowledged by the appellant, he did not meet the requirements for Manager 1, Human Resources. Rather, the record reveals that the appellant was appointed to a higher title, for which he did qualify. Furthermore, other than the appellant's allegations that the delay in appointing him to a higher level title was due to his race, he has provided no evidence in support. Moreover, although the appellant claims that he was performing higher level duties and is therefore entitled to either an increase in salary or to a higher title, the record indicates that the appellant did not file a classification review request with this agency. However, since classification reviews are based on a review of *current* duties, it is impossible, at this date, to determine if the appellant had been working out of title.

Finally, the Commission does not find the remainder of the appellant's arguments persuasive as most are just generalized allegations of widespread bias or discrimination against Hispanics by DHS, which are not substantiated by the evidence in the record. Accordingly, the investigation was thorough and impartial 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 18TH DAY OF DECEMBER, 2013

Robert E. Brenner
Member
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
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Attachment

c: E.L.
Mamta Patel
Edward McCabe
Joseph Gambino

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
PO BOX 700
TRENTON NJ 08625-0700

JENNIFER VELEZ
Commissioner

April 19, 2013

Sent Regular and Certified Mail

[redacted]

Re: ***Discrimination Complaint of November 4, 2011***
Division of EEO/AA File No. 077-11

Dear Mr. L[redacted]

As you are aware the Department of Children and Families ("DCF"), Office of Equal Employment Opportunity and Affirmative Action ("Office of EEO/AA") investigated your complaint of discrimination based on your race and ethnicity against D[redacted] Z[redacted] (White Female) (Retired December 2011), former Chief of Staff, Department of Human Services ("DHS"). This investigation was conducted by the DCF, Office of EEO/AA on behalf of the State Division of Equal Employment Opportunity and Affirmative Action ("Division of EEO/AA) due to the conflict of interest within the DHS, in accordance with the *New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace ("State Policy")*. The Office of EEO/AA conducted a thorough investigation pursuant to the State Policy, during which individuals were interviewed and documentation was reviewed and analyzed.

I have reviewed the DCF, Office of EEO/AA's investigation and adopt the findings and recommendations discussed below.

Specifically, you alleged that under the administration of Ms. Z[redacted] Hispanic and other minorities were not given the same opportunity for promotions in the Central Office. Specifically, you allege that A[redacted] P[redacted] (White female) was promoted because of her race and C[redacted] M[redacted] (White female) was not qualified for her promotion to Manager 3; and G[redacted] B[redacted] (Hispanic male), former Director of Affirmative Action at $102K was the lowest paid Director before his retirement. You further allege that you were not promoted to Director of the Training Unit, because of your race. For the reasons stated below the investigation did not substantiate your allegations of race or ethnicity discrimination in violation of the State Policy.

Promotion to Director

You allege that in 2006, K[redacted] R[redacted] M[redacted] (Black female), former Assistant Commissioner, appointed you to head the Training Unit. However, you were not given

the title of Director, nor the pay, for the job duties and responsibilities you acquired compared to your predecessors, including Ms. R[redacted]-M[redacted] who once held the position but as Director. The investigation revealed that you were not promoted to the Director's title because you did not qualify for this position. Your supervisors stated that your "strength lay in the day to day office management" and that you lacked the requisite leadership qualities. Moreover, the investigation revealed that based upon a review by the Civil Service Commission ("CSC") you did not meet the qualifications necessary for the Director's position. The investigation revealed your supervisors agreed that you should be elevated or receive some form of promotion, but not to the level of a Director. The investigation revealed that you have since been promoted to Training and Staff Development Officer, Range 29 and currently earn approximately $99,618.00 a year. You also complain that you were not equally compensated for performing the same duties and responsibilities as the former director of the Training Unit, including Ms. R[redacted]-M[redacted] The investigation revealed that when Ms. R[redacted]-M[redacted] was the Director of the Training Unit she earned approximately $10,000 less than you.

Lastly, you complain that your promotion to Training and Staff Development Officer took longer to approve than the promotions of other employees. Your supervisors stated that all promotions must be approved at the Department level, then by the Governor's Office and also by the CSC. The investigation revealed that your supervisors, including Ms. Z[redacted] had no control over the length of time other Departments took to review your promotional paperwork. The investigation found no evidence to substantiate your allegation that Ms. Z[redacted] failed to promote you to Director, that there was a delay in your promotion to Training and Staff Development Officer or that you have been unfairly compensated based on your race or ethnicity in violation of the State Policy.

Appointment of A[redacted] P[redacted]

You also questioned the appointment of A[redacted] P[redacted] (White female) to Director, of the Office of Cooperative Labor Relations, over P[redacted] A[redacted] (Black female). The DHS posted for the position of Director of Office of Cooperative Labor Relations and received resumes from several internal and external candidates. You stated that Ms. P[redacted] was promoted from a range 32 to a range 35 within twenty weeks. The investigation revealed that Ms. A[redacted] withdrew her application for the position. The investigation also revealed when the former Director retired, the position was downgraded from an M36 to an M35 and Ms. P[redacted] was selected following the posting and interview process. The investigation did not substantiate that Ms. P[redacted] was promoted in violation of the State Policy.

Appointment of C[redacted] M[redacted]

You also questioned the appointment of C[redacted] M[redacted] (White female) to Manager 3. You stated that Ms. M[redacted] was appointed to a classified position from a non-classified confidential assistant position, not having previously served in the title of Human Resource Manager 1 or Human Resource Manager 2. The investigation revealed that the CSC who approved the appointment of Ms. M[redacted] to Manager 3 reviewed Ms. M[redacted]s qualifications, including her promotional paperwork. The investigation revealed that Ms. M[redacted]s prior experience at the Department of Personnel, now CSC,

her Master's Degree, and her experience as a confidential assistant, Acting Director of HR/Manager I all counted toward the required experience. The investigation did not substantiate Ms. M[redacted]s promotion violated the State Policy.

Promotional Opportunities and Appointments within (DHS) of Hispanics and other Minorities

You allege that you believe that Ms. Z[redacted] is "one of the most prejudiced people you have ever met." Specifically, you allege that Hispanics and other minorities have not been promoted in the Central Office. The investigation revealed that there have been several minority promotions at the Central Office, including Assistant Commissioner, Government Representative as well as other Manager positions. Ms. Z[redacted] stated that she believes that (DHS) is trying to work toward sustaining a diverse group of employees and that there was no intent on her part to promote or hire on the basis of ethnicity or race. Ms. Z[redacted] stated that she recalls efforts made to promote a Hispanic employee, J[redacted]G[redacted] to a leadership position, as he had shown leadership qualities and she felt he deserved compensation. Ms. V[redacted] confirmed that her office was seeking to promote J[redacted]G[redacted] to management since DHS believed he was working out of title.

You also allege that G[redacted]B[redacted] (Hispanic male), retired as the Director of Diversity and Inclusions with (DHS) and was earning $102K, the lowest salary among other Directors. You stated that Mr. B[redacted] did not have a staff and did not supervise anyone during his last year of working with the Department. After he retired his office was eliminated. The investigation revealed that at the time of his retirement, Mr. B[redacted] salary was $102K, but it had nothing at all to do with the fact that he is Hispanic. As a matter of fact at the time, Mr. B[redacted] equivalent in the EEO Office was a White male whose salary was $90,725.73. Furthermore the individual, who is currently functioning as the Director of EEO & AA combined, who is also a White male, makes a salary of $91,781.49. The investigation further revealed that as staff retired in Mr. B[redacted] office they were not backfilled and upon his retirement the AA (Diversity) Office was once again consolidated with the Department's EEO Office. Based on witness testimony, the DHS was the only State Department where EEO and AA (Diversity) were two separate offices so after Mr. B[redacted] retired the Office of AA (Diversity) was consolidated with the Office of EEO.

The investigation found no evidence that Ms. Z[redacted] or anyone else at the DHS failed to promote Hispanics or minorities in violation of the State Policy.

After a thorough review of your concerns, the investigation did not substantiate your allegations of discrimination based on race or ethnicity in violation of the *State Policy*. Therefore, this matter is closed.

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. Be advised that effectively July 1, 2010, 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.

At this time, I would like to remind you that the *State Policy* prohibits retaliation against any employee or applicant for employment who files a discrimination complaint or participates in a complaint investigation. Furthermore, this matter remains confidential and the results of the investigation should not be discussed with others.

Should you have any questions, please contact Ed McCabe, Acting Director at the Office of EEO/AA at (609) 984-7712.

Sincerely,

Gerald Suozzo
Chief of Staff

cc: Mamta Patel, Esq., Director
Division of EEO/AA

Ed McCabe, Acting Director, DHS