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**STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of R.M., Department
of Education

CSC Docket No. 2014-1797

Discrimination Appeal

ISSUED: APR 20 2015 (LDH)

R.M, an Education Program Assistant 1 at the Department of Education (DOE), appeals the attached decision of the Chief of Staff, DOE, which found no violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, an African-American female, filed a discrimination complaint with New Jersey's Division of Civil Rights (DCR) alleging discriminatory practices from management, specifically Assistant Commissioner D.C., a Caucasian male.¹ She alleged that the appointing authority and D.C. have a history of not promoting African Americans and other minorities at the same rate as Caucasians with the agency. In this regard, she alleged that the appointing authority denied her the opportunity to take the promotional test for the position of Secretarial Assistant 1, Non-Stenographic. Additionally, she contends that she was denied a reasonable accommodation request for a reassignment to a different unit for her disabilities (anxiety and depression). As a result of her complaint, the matter was investigated by the Division of Equal Employment Opportunity/Affirmation Action (EEO/AA). The EEO/AA's investigation was unable to substantiate any of the appellant's allegations of discrimination, retaliation or denial of promotional opportunity in violation of the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant argues that she has been subjected to discrimination and retaliation throughout her employment with the appointing authority. She contends that although she has

¹ D.C. resigned from his position on October 31, 2014.

passed the Civil Service examination for the title Secretarial Assistant 2, Non-Stenographic (PS0579F), DOE, she has been overlooked for promotional opportunities on numerous occasions. In this regard, she asserts that she has been employed at DOE for over 25 years and been promoted only three times. The appellant maintains that she was not promoted due to her complaint against the hiring practices of CWA Local 1033. She also contends that all of her responsibilities have been taken away from her. The appellant additionally argues that the appointing authority forced her to take a medical leave for nine months without pay or medical coverage, and that D.C. refused her request for a transfer despite having medical documentation supporting her request. In support, she submits, *inter alia*, a Position Classification Questionnaire; e-mail correspondence and letters of complaint to employees in the DOE, several banks and her landlord; letters of eligibility; and denial of promotional appointment letters.

In response, the EEO/AA requests that the appellant's appeal be denied in its entirety. In this regard, the appellant did not provide any specific incidents, documentation, or names of any witnesses to corroborate her allegations, or other evidence to support her allegations. The investigation revealed that the promotional announcement for the title of Secretarial Assistant 1, Non-Stenographic (PS6084F) was announced open only to the individuals serving in the title of Secretarial Assistant 2, Non-Stenographic. During that time, the appellant was in the title of Educational Program Assistant 1. Thus, the appellant was ineligible for the examination and has failed to support her allegation of denial of promotional opportunity and discrimination. The EEO/AA also asserts that the appellant's allegation that the appointing authority has a history of not promoting African Americans and other minorities at the same rate as Caucasians is without merit because the appellant did not provide any evidence to support her allegation.

The EEO/AA noted that the appellant's allegation that she was improperly denied a reasonable accommodation, to be reassigned to another unit, was also not substantiated. In this regard, the EEO/AA's investigation revealed that the appellant attended an Independent Medical Exam (IME) on June 3, 2010 with Dr. Carl Chiappetta, M.D., who recommended that the appellant be (1) placed on a leave of absence; (2) seek outpatient treatment; (3) be reassigned to another unit; and/or (4) be prescribed medication. As a result, the appellant was placed on a leave of absence until her return to work in 2011 and she continues to seek treatment. However, the investigation revealed that the appointing authority was unable to reassign the appellant to another unit because it did not have a position available that was suitable for her current title and job function.

Lastly, the EEO/AA found that the appellant's allegation that the appointing authority has failed to promote or accommodate her in retaliation for complaining about the discriminatory treatment by the DOE against African American employees was unsubstantiated. Specifically, it found that since there was no

record of the appellant filing a prior EEO/AA complaint or having any involvement in a previous EEO/AA investigation, there was no violation of the State Policy.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include 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. *See N.J.A.C. 4A:7-3.1(a)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)3*.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted. The EEO/AA correctly concluded that there was no violation of the State Policy with regard to discrimination based on race as the appellant has not offered any incident, any testimony or any evidence to support her allegation. The EEO/AA correctly found that since the appellant had not completed the required paperwork for a reasonable accommodation, it could not have granted her request. However, the EEO/AA also noted that the appellant's request for a reassignment was not granted as there was no open position in another unit for the appellant's title.

Additionally, the EEO/AA correctly concluded that the appellant was not denied a promotional opportunity because of race or retaliation as the examination for Secretarial Assistant 1, Non-Stenographic (PS6084F) was only open to applicants in the title of Secretarial Assistant 2, Non-Stenographic. Further, agency records reveal that the appellant has never applied for an examination for the title of Secretarial Assistant 1, Non-Stenographic. Though the appellant submits many denial letters for promotional advancement, she fails to submit any evidence that the denials were done in violation of the State Policy.

Lastly, with regard to the appellant's claims of retaliation, a critical element for a retaliation allegation is the prior filing of an EEO/AA complaint or previous involvement in an EEO/AA investigation. *See In the Matter of Vincenzo Billero* (CSC, decided March 7, 2012) (Although there was no prior EEO complaint between the appellant and the Associate Administrator, the appellant's report of protected actions to the Associate Administrator was sufficient to trigger the protections of the State Policy regardless of whether the complaint was processed by the EEO). Here, there was no record of a prior filing of an EEO/AA complaint or any involvement in a previous EEO/AA investigation by the appellant to sustain a

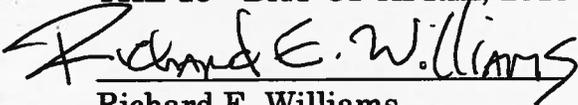
retaliation allegation. Thus, the appellant's allegation of retaliation is without merit. Accordingly, the EEO/AA's investigation was thorough and impartial and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 15th DAY OF APRIL, 2015**



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and
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Attachment

**c: R.M.
Mamta Patel
Beverly Thompson**