

B-13

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of M.S., Department of
Corrections

CSC Docket Nos. 2015-137

Discrimination Appeal

ISSUED: **APR 16 2015** (SLK)

M.S., a Storekeeper 2 with the Department of Corrections (DOC), appeals the attached decision of the Equal Employment Division (EED) for DOC, which found that the appellant did not present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the appellant, an African-American female, filed a complaint with the EED alleging that she had been discriminated against by her immediate supervisor, J.F., Business Manager Corrections, A.C., Engineer In-Charge Maintenance 1, and E.W., Associate Administrator Prison Complex, on the basis of race and sex/gender. Specifically, the appellant asserted that J.F., A.C., and E.W. were interview panelists for the position of Storekeeper 1 and she alleged that the position should have been awarded to her based on seniority. The appellant contended that the panelists deliberately manipulated the candidates' scores to ensure that the preferred candidate was awarded the position. Further, the appellant alleged: (1) in 2007, she was denied by J.F. a request to change her schedule due to a family matter while J.F. approved the change of two male Caucasian employees' schedules due to family matters; (2) she relocated items to the Commissary for operational effectiveness; however, J.F. ordered the appellant to move everything back to its original area; (3) after the filing of this EED complaint, she was subjected to retaliation when the Special Investigation Divisions (SID) confiscated her computer; (4) she was given a Letter of Counseling and charged with insubordination by A.K. despite receiving a satisfactory rating on her Performance Evaluation System (PES) the week before receipt of the letter; and (5) she was moved for "operational effectiveness" to five different units within the

Business Office while Caucasian females were permitted to remain in the Business Office.

The EED conducted an investigation into the matter which included interviews with witnesses and reviewing documents and found no evidence to support the allegations. During the investigation, the appellant advised that E.W. and A.C. did not subject her to discrimination or harassment. With regard to the Storekeeper 1 position, the investigation revealed that the interviews were conducted in a fair and impartial manner as each candidate was asked the same 10 questions and the successful candidate's scores were in line with the other top candidates. In relation to the appellant's request for a work schedule change, the investigation revealed that the appellant did not request a work schedule change and J.F. indicated that he would have approved it if requested. With respect to the Commissary items, the investigation revealed that J.F. directed the appellant to secure the inmate clothing and sneaker inventory as these are the items which are most often stolen. However, against J.F.'s directive, the appellant placed the items in the inmate eating area thereby giving the inmates unfettered access to these items. With respect to the retaliation claim, the investigation revealed that SID temporarily removed the appellant's computer based on the allegation that she was misusing it. Regarding the Letter of Counseling and insubordination charge, the investigation revealed that on January 2, 2014, the appellant received a Letter of Counseling for issues that arose during the latter part of 2013 for not following the above referenced directive from J.F. and that the appellant was not charged with insubordination or other discipline. Further, the investigation found that the satisfactory PES rating that the appellant referenced was for the period prior to the incident. Lastly, in relation to the appellant's moves for "operational effectiveness", the investigation revealed that these moves were not based on race and/or gender, but took place over 24 years and that her most recent move was to the Canteen 13 years ago.

On appeal, the appellant reiterates that in regard to the Storekeeper 1 position, it has been the practice to give the higher title to the individual with the most service time and that she answered the interview questions properly because she had experience in the Storeroom. The appellant maintains that she did ask J.F. for a schedule change. However, she does not have this in writing and it was only witnessed by S.S., a now retired and former Associate Administrator Prison Complex. Concerning the Canteen items in the warehouse, the appellant asserts that she actually separated the inmates from the products. In reference to her computer, she indicates that it was returned to her in June 2014 and that it was not until June 25, 2014 that the SID interviewed her about misuse. She acknowledges that she had games on her system that were emailed to her from other staff. Further, she states that when her computer had been taken six months earlier, she was advised that this was to have her hard drive wiped. However, the computer was returned with the games still on them. Therefore, she implies that the games

should have already been removed if they truly were an issue. In relation to her not checking inventory at the Canteen, she states that she was not assigned to the Canteen at that time and therefore it was not her responsibility. The appellant argues that if she was not African American, she would have been allowed to stay in the Business Office.

In reply, the EED asserts that the appellant has simply stated that she disagrees with its findings but has failed to provide a basis for her appeal of its determination. It argues that its findings are not arbitrary, capricious or unreasonable, were supported by evidence, and as a result, her appeal should be dismissed as without merit. The EED reiterates that the appellant acknowledged during the investigation that A.C. and E.W. did not discriminate against her and that her complaint was actually against J.F. It highlights that it conducted a thorough investigation, which included interviews with several witnesses and a review of the pertinent documents, and did not substantiate the appellant's claims that actions were taken against her due to her race or gender.

CONCLUSION

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

N.J.A.C. 4A:7-3.1(h) states, in pertinent part, that retaliation against any employee who alleges that he or she was the victim of discrimination/harassment, is prohibited by the State Policy.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

N.J.A.C. 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that J.F., E.W., and/or A.C. violated the State Policy. During the course of the investigation, the EED interviewed witnesses and reviewed documents and found no evidence to support that any action taken against the appellant was based on her race or gender. Further, the appellant acknowledged during the investigation that she was not subjected to any discrimination or harassment by E.W. or A.C. and that her actual complaint was only against J.W.

With regard to the specific allegations, the investigation revealed that there was no improper manipulation of the successful candidate's answers during the selection process for the Storekeeper 1 position as that candidate's answers were in line with other top candidates for the position. In reference to her allegation that she was denied the opportunity to change her schedule due to family matters when two Caucasian males were allowed to change their schedules due to family matters, the investigation revealed that the appellant never made such a request and J.F. stated that he would have approved such a request if asked. Further, the appellant does not have any written record that such a request was made and only names a witness who is now a retired employee. In relation to the Commissary incident, the investigation revealed that, against J.F.'s directive, the appellant placed inventory in the inmate eating area thereby giving the inmates unfettered access to these items. As such, the appellant received a Letter of Counseling. However, the appellant was not charged with insubordination as she asserts or any other discipline as a result of this incident. Moreover, the Letter of Counseling that the appellant received is not inconsistent with her satisfactory PES, as the time period for the satisfactory PES was prior to the Commissary incident. Concerning her computer, the investigation revealed that it was removed due to allegations of misuse and not in retaliation for her filing her EED complaint. Finally, with respect to her allegations that she was constantly being moved due to her gender and/or race, the investigation revealed that her movement was over a period of 24 years and that her most recent move was to the Canteen 13 years ago. In summary, the appellant has not provided any evidence to support her allegations.

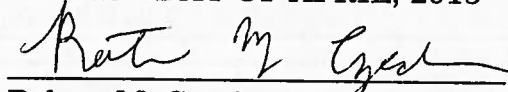
Accordingly, the Commission finds that the EED's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15th DAY OF APRIL, 2015


Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: M.S.
Leila Lawrence, Esq.
Mamta Patel
Joseph Gambino**