

B-44



STATE OF NEW JERSEY

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

In the Matter of R.C.,
Department of Law and Public Safety

CSC Docket No. 2014-1905

Discrimination Appeal

ISSUED: APR 17 2015 (WR)

R.C., an Assistant Crew Supervisor Mechanics with the Department of Law and Public Safety, represented by George Daggett, Esq., appeals the attached determination of the Office of Equal Employment Opportunity (EEO), 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).

By way of background, the appellant alleged that L.F., a Master Mechanic in the New Jersey State Police Fleet Management Unit, discriminated against him due to his age. Specifically, the appellant alleged that L.F. selected A.K., a younger employee, for the promotional position of Crew Supervisor at the Buena Garage, despite the fact that A.K. was ranked lower on the Crew Supervisor Mechanics (PS120333) certification. Further, the appellant claimed that when asked why A.K. was promoted, L.F. stated that "[A.K.] is the future of State Police . . . [and] he will be here to carry on the State Police when we are gone." In response, the EEO conducted an investigation which determined that L.F.'s statement to the appellant was ambiguous. The investigation further determined that A.K. had served as a Crew Supervisor provisionally pending promotional examination procedures for more than one year prior to his permanent appointment and L.F. selected A.K. on the basis of his performance evaluation. Accordingly, the EEO concluded that L.F. did not discriminate against the appellant in violation of the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant contends that A.K. should not have been permanently appointed as the Crew

Supervisor of the Buena Garage because A.K. had the lowest test score and the least seniority. Accordingly, the appellant complains that L.F. circumvented civil service rules to appoint A.K. In this regard, the appellant initially complains that in August 2011, L.F. bribed an employee at another garage to rescind his request for a transfer to the Buena Garage, which resulted in A.K. being promoted to Acting Crew Supervisor. The appellant states that a month later, in September 2011, L.F. told him that he intended to permanently appoint A.K. to the title of Crew Supervisor. The appellant asserts that he asked L.F. how he would do that because A.K. was not one of the three highest-ranked eligibles, to which L.F. replied that he would have W.S., an Assistant Crew Supervisor Mechanics and ranked second on the eligible list, indicate that he was not interested in the position.¹ Nevertheless, to appoint A.K., the appellant asserts that L.F. moved the first-ranked eligible, S.K. to another position in the mail distribution office which resulted in A.K. becoming reachable for appointment. The appellant claims that S.K. retained his job title of Assistant Crew Supervisor and his salary.²

The appellant contends that by appointing A.K., L.F. discriminated against him on the basis of his age. In this regard, the appellant states that he was 58 years old and A.K. was 42 years old during the time at issue. He notes that the two other eligibles on the subject eligible list, S.K. and W.S., were 56 and 57 years old, respectively. As evidence of L.F.'s discriminatory intent, the appellant reiterates his allegation that L.F. remarked that "[A.K.] is the future of State Police. He will be here to carry on the State Police when we are gone." The appellant claims that other employees overheard this remark. Additionally, the appellant contends that L.F. said that he and W.S. were ranked the same on the eligible list and the appointing authority confirmed this to him. The appellant states that he believes that "this is a story made up to cover [a] deliberate inappropriate use of [the] eligibility list." Finally, the appellant complains that the EEO never verified the eligibility list.

Despite the opportunity, the EEO did not respond.

Agency records reveal that the PS120333 certification was issued on March 29, 2012 from the Crew Supervisor Mechanics (PS9100P) eligible list, which promulgated on May 5, 2011 and expired on May 4, 2014. The certification contained the names of S.K., W.S., the appellant, and A.K., who were ranked 2, 4, 4A and 5, respectively. The appointing authority returned the certification, indicating that S.K. was not interested in the subject position and appointing A.K., effective April 16, 2012. It is noted that there is no record that the appellant appealed his bypass on the subject certification.

¹ Agency records reveal that W.S. has since been appointed to Crew Supervisor Mechanic, effective May 21, 2013.

² Agency records indicate that S.K. was appointed as a Senior Postal Clerk, effective August 24, 2013 as the result of a voluntary demotion and receives a lower salary.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *N.J.A.C. 4A:7-3.1(b)* states in part that a violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Further, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. See *N.J.A.C. 4A:7-3.1(h)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C. 4A:7-3.2(m)3*.

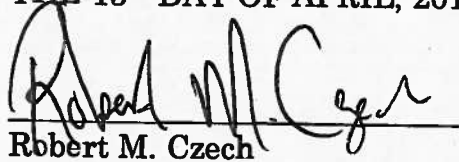
The Commission has conducted a review of the record and finds that an adequate investigation was conducted which concluded that, while L.F. remarked that A.F. was the future of the State Police, his comment was ambiguous and did not implicate the State Policy. The investigation also determined that A.K. was appointed based upon his performance evaluation. On appeal, the appellant asserts that L.F. circumvented civil service rules to appoint A.K. because he was younger. However, he offers no evidence to support his allegations. As noted above, S.K. indicated that he was not interested in the position. Also, S.K. was appointed to the title of Senior Postal Clerk, effective August 24, 2013, one year and five months later. L.F.'s comment that A.K. is the future of the State Police is ambiguous and the EEO noted that legitimate reasons were provided for the appointing authority's selection of A.K., namely that he had been serving provisionally in the subject title and his evaluations supported the promotion. Therefore, the appellant has failed to meet his burden of proof in this matter. See *N.J.A.C. 4A:7-3.2(m)3*. Accordingly, under these circumstances, no basis exists to find a violation of the State Policy.

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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Chairperson
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and
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Attachment

**c: R.C.
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