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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. 2017-1168

Request for Reconsideration

ISSUED: MAY 03 2017

(WR)

R.C., a former Assistant Crew Supervisor Mechanics with the Department of Law and Public Safety,¹ requests reconsideration of the attached final administrative decision, rendered on April 15, 2015, which denied his appeal of the determination of the Office of Equal Employment Opportunity (EEO), which determined that the petitioner 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 petitioner 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 petitioner 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 petitioner 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 petitioner 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 petitioner in violation of the State Policy.

¹ Agency records indicate that the petitioner retired from State service, effective March 31, 2015.

In its April 15, 2015 decision, the Commission upheld the EEO's determination, noting 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. Moreover, it observed 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.

In his request for reconsideration, the petitioner reiterates his initial arguments, namely that L.F.'s remarks that A.F. was the future of the State Police and his appointment as Crew Supervisor was discriminatory on the basis of his age. He also contends that the EEO investigation was not thorough because many material errors occurred and was not impartial because it did not verify all the pertinent information. In particular, he claims that the EEO's response to his discrimination complaint mistakenly indicates that he was bypassed for promotion in September 2011. The petitioner contends that A.F. was actually promoted in April 2012, but in September 2011 L.F. indicated that A.F. would be promoted. He alleges that this proves "the promotion based on age was premeditated." The petitioner also complains that the EEO's investigation took longer than 120 days to complete and it did not seek an extension. The petitioner quotes a portion of the EEO letter which states that it would not investigate his allegation that he was not promoted in April 2012 because he did not provide any facts concerning his allegation. He argues that that he did provide facts, but does not submit any evidence in support of his claim.

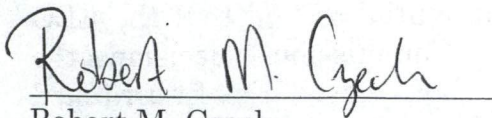
The petitioner contends, without evidence, that L.F. and C.E., a Personnel Assistant with the appointing authority, "lied in the EEO investigation to cover-up [the] deliberate inappropriate disposal of [the] eligible list resulting in age discrimination." He also reiterates his claim from his initial appeal that the EEO never verified the eligibility list. Regarding the Commission's decision, the petitioner complains that it mistakenly wrote that L.F. moved the first-ranked eligible to another position, which allowed A.K. to become reachable for appointment. The petitioner alleges that this was a separate and later incident which is not applicable to the instant matter. He further notes that when the Commission summarized his argument that L.F. said that he and W.S. were ranked the same on the eligible list, L.F. told the "same lie" to EEO investigators and the appointing authority could not have confirmed this to L.F. because "the interested eligible candidate list indicates both ranks and test scores were different." The petitioner also contends, without evidence, that S.K. did indicate that he was interested in the Crew Supervisor (PS9100P) position. Finally, the petitioner argues at length that A.F.'s appointment violated civil service regulations because A.F. was not reachable for appointment. In this regard, he reiterates that A.K. had the lowest test score and the least seniority.

CONCLUSION

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 reiterates his prior arguments and presents novel arguments with no documentary support. Regarding the alleged errors in the Commission's decision, assuming *arguendo* that there were errors, the petitioner has not demonstrated that they were clear material errors. In this regard, it is emphasized that even if A.K. was appointed in contravention of civil service rules as the petitioner contends, which does not appear to be the case, he has failed to demonstrate that A.K.'s appointment constituted age-based discrimination against him.

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 3rd DAY OF MAY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher Myers
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: R.C.
Mamta Patel
Colleen Gadsby
Records Center