



STATE OF NEW JERSEY

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

In the Matter of M.W., Department of
Human Services

CSC Docket No. 2018-21

Discrimination Appeal

ISSUED: APRIL 23, 2018 (CSM)

M.W., a Senior Technician, Management Information Systems with the Department of Human Services, appeals the determination of the Assistant Commissioner, Office of Legal Affairs, that the appellant did not 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).

The appellant filed a complaint with Human Services' Office of Equal Employment Opportunity (EEO) alleging that he had been discriminated against based on religion and age. Specifically, the appellant claimed that the appointing authority denied him a promotion to Network Administrator 1 and promoted M.A., a permanent Information Technology Specialist, because of his age and because he is non-Jewish. The EEO investigated the matter, which included interviewing witnesses and reviewing documentation, and could not substantiate a violation of the State Policy. Rather, it found that the appellant was not promoted because he and several other employees did not meet all the requirements for the position

On appeal, the appellant states that the hiring managers as well as Human Resources have "no idea what my qualifications mean." In this regard, he states that he is qualified as he is for the Network Administrator 1 title because he is a Microsoft Certified Systems Engineer and Administrator, a Microsoft Certified Professional and Network Plus, and is Dell Certified. Further, the appellant claims that the Network Administrator 1 position was never posted statewide and it was "scoped" to M.A.'s office so at least three people could apply. The appellant also asserts that M.A. does not hold any "certifications" and has been getting on the job

training so at the time of his interview he was not qualified for the position. Additionally, the appellant contends that Z.Z., a provisional Network Administrator 1, was hired for the position because the appellant did not “meet the standards” utilized to interview applicants. However, the appellant claims that Z.Z. is performing the same duties that he performs as a Senior Technician, Management Information Systems. He also contends that he was promised a promotion and requests that his title be “upgraded to Information Technology Specialist (Range 21) and back dated to 2012 when it was discussed that my title would be upgraded.”

In response, the EEO presents that the appellant alleged that the appointing authority denied him a promotion to Network Administrator 1 because of his age and because he is non-Jewish. However, the investigation reviewed that the appellant and M.A., are both 45 years old. Although the appellant is Jewish and M.A. is non-Jewish, the investigation could not substantiate that the appellant was not promoted based on his religion. Rather, the EEO states that the appellant applied for the position in April 2016 however it was determined that he did not meet the rubric system requirements for the position. Further, the investigation revealed that in October 2015, a promotional freeze exemption request was submitted for M.A.’s position because the duties of the position evolved to properly classify the position as Network Administrator 1. This was as the result of staff attrition and the closure of two developmental centers.

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. Additionally, 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 the appellant has not established that he was subjected to discrimination in violation of the State Policy. The investigation included interviewing witnesses and reviewing documentation and found that both the appellant and M.A. were 45 years old. Additionally, notwithstanding his possession of various certifications, the investigation found that the appellant did not meet the rubric system requirements for the position. In this regard, it is noted the process that is the subject of the appellant’s appeal appears to have been the result of a vacancy posting, *not* a promotional announcement issued by the Commission. Vacancy postings are initiated by the appointing authority and they are not monitored by this agency.

Such postings are used by the appointing authority to generate a list of interested individuals to fill vacant positions. If a provisional appointment pending promotional examination results from the posting, the appointing authority must adhere to Civil Service rules and procedures regarding provisional appointments and promotional examination announcements. Therefore, the requirements set forth in the vacancy posting may not necessarily be those included on the resultant promotional announcement. Regardless, the investigation found that the appellant, as well as several other employees, some of which had as much or more experience than the appellant, did not meet all the requirements of the rubrics for the position. Other than his mere allegations, the appellant has not provided any evidence that M.A. is not qualified for Network Administrator 1 or that his credentials are superior to that of M.A.¹

With respect to his argument that his position performs the exact same duties as those of whose positions are classified as Network Administrator 1, the investigation determined that M.A.'s position evolved over time which resulted in it requesting a freeze exemption to properly classify his position. It is also noted that the appellant filed a classification appeal in July 2016 with the Commission, contending that his position should be reclassified as Network Administrator. However, the Commission found that his position was properly classified as Senior Technician, Management Information Systems. *See In the Matter of M.W.* (CSC, decided May 17, 2017). Therefore, no basis exists to substantiate that the appellant is performing duties consistent with the Network Administrator 1 position classifications of M.A. or Z.Z.

Accordingly, the Commission finds that the EEO's investigation was thorough and impartial, and the record does not support a finding that there was 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.

¹ According to examination records, this agency determined that the appellant was below the minimum requirements in education and experience for the open competitive examinations for Network Administrator 1 (S0453R), (S0053K), (M6622F) and (C0360U).

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON THE
18TH DAY OF APRIL, 2018

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: M.W.
Rachel L. Gervais
Mamta Patel
Records Center