



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of L.J., William
Paterson University

Request for Reconsideration

CSC Docket No. 2019-1237

ISSUED: APRIL 18, 2019 (ABR)

L.J., a former Assistant Supervisor 1, Administrative Services¹ with William Paterson University (WPU), requests reconsideration of the attached final decision, rendered on October 3, 2018, which found that he failed 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 allegations are fully explained in the attached decision which is incorporated herein. The petitioner, an African-American male, filed a complaint with WPU's Office of Employment Equity and Diversity (OEED) alleging that he was discriminated against on the basis of his race with respect to compensation and staffing in his department. Specifically, the petitioner complained that even though he was one of the most senior employees in WPU's Division of Administration and Finance, he was the lowest paid employee holding a "Director" title and his salary increases did not mirror those of similarly situated employees. The petitioner also claimed that since 2006 his requests for additional staff were repeatedly denied. An investigation by the OEED did not find evidence to support the claim that the petitioner had been subjected to differential treatment on the basis of his race. In its prior decision, the Civil Service Commission (Commission) found that the petitioner's claims regarding his compensation and classification were untimely. With respect to the petitioner's claim that he was subjected to disparate treatment on the basis of his race in violation of the State Policy, the Commission found that an adequate investigation was conducted, that the relevant parties were

¹ The petitioner retired from his position, effective June 30, 2017.

interviewed and that the investigation failed to establish that the petitioner was discriminated against or subjected to retaliation in violation of the State Policy.

In his request for reconsideration, the petitioner asserts that the Commission's prior decision overlooked clear deficiencies in the OEED's investigation. Specifically, he contends that the Commission should have rejected the OEED's determination as untimely because it did not complete its investigation within 120 days of his March 23, 2017 complaint. Additionally, he maintains that WPU's initial determination and its responses to his initial appeal to the Commission were biased. In this regard, he notes that WPU's initial determination was rendered by the Vice President for Human Resources and he maintains that she had a conflict of interest because her supervisor, the Vice President for Administration and Finance, headed the the division that he maintained discriminated against him. Additionally, the petitioner asserts that the correspondences from the OEED demonstrate that its investigation of his complaint was not thorough and impartial.

Further, the petitioner argues that the Commission's October 3, 2018 decision relied upon false and misleading information from WPU and that the Commission consequently failed to recognize that he was subject to discrimination on the basis of his race. In this regard, he maintains that its finding that he declined a position as a "non-unionized higher education manager" was untrue. He asserts that when WPU asked him about becoming a "non-unionized higher education manager," it was not extending a formal offer to do so. Rather, it was merely an effort by WPU to gauge his theoretical interest in such a position. He contends that WPU failed to provide sufficient evidence that it made a concrete offer of a "non-unionized higher education manager" position to him as the affidavits WPU provided from its Vice President for Administration and Finance and its Director of Human Resources did not specify when an offer was made and the OEED did not provide any documentation to otherwise prove that WPU made him such an offer. The petitioner complains that the OEED did not supply the Commission with the more than 100 pages of emails he and others sent to it regarding the investigation. He also argues that the knowledge and experience of the individual the appointing authority hired to replace him as the "Director of Purchasing" did not justify WPU's decision to provide him with a higher salary. Specifically, the petitioner asserts that his successor's knowledge of the P-Card Program was insignificant as the P-Card Program represents a relatively small part of the Purchasing Department's functions and he maintains that many of the day-to-day P-Card Program operations are handled by a different administrator at WPU. Additionally, the petitioner maintains that his successor's experience relative to his own did not support his successor's higher salary. In this regard, the petitioner asserts that his 25 years of service at WPU are more significant than the record of his successor, as much of his successor's experience was with a different institution and included duties such as managing the storeroom and mailroom

which are not among his responsibilities as the “Director of Purchasing” at WPU. The petitioner also submits that WPU’s claim that he was represented by the Communication Workers of America (CWA) was inaccurate. He maintains that WPU was obligated to advise him about his rights but failed to do so. Accordingly, he attributes any delay in appealing his classification and compensation to that failure. Finally, the petitioner maintains that the Commission is required to consider the Diane B. Allen Equal Pay Act, P.L. 2018, c. 9, and to evaluate whether race was a factor in the compensation he received relative to other Directors at WPU within the last six years. In this regard, he argues that because his functional title was Director of Purchasing, he had all of the duties and responsibilities of a Director, but not the compensation commensurate with those of other similarly situated employees. He maintains that the record demonstrated that two Caucasians had higher titles and significantly higher salaries, even though they were not higher education managers or department heads.

In response, WPU, represented by Glenn R. Jones, Esq., General Counsel, WPU, argues that the petitioner has not met his burden of proof for reconsideration as he merely restates his disagreement with the OEED’s and the Commission’s decisions without furnishing any new or additional evidence that would have changed the Commission’s initial decision in this matter or demonstrating that a material error occurred. WPU asserts that the timing of its determination following his March 23, 2017 OEED complaint and the supposed conflict of interest cited by the petitioner do not support reconsideration because the petitioner did not raise these issues prior to the Commission’s October 3, 2018 decision and he has not offered an explanation for his failure to do so, or how such a finding by the Commission would have changed the outcome of its prior decision. Additionally, it argues that the petitioner has not offered sufficient proof that its determination was untimely. Further, it maintains that the OEED’s investigation was impartial and that the Vice President of Human Resources’ reporting relationship to the Vice President for Administration and Finance did not create a conflict of interest. Specifically, it asserts that there was no conflict as the Vice President of Human Resources reported directly to the President of the University and the petitioner did not report directly to the Vice President for Administration and Finance.

Further, WPU argues that the petitioner has not provided any support for his claim that the OEED submitted false and/or misleading information or his contention that its investigation was biased in favor of WPU. It asserts that his denials about being offered a “non-unionized higher education manager” position or holding a CWA position rehash arguments that he made to the Commission prior to October 3, 2018 and do not constitute new evidence. Moreover, it maintains that he has not provided any proof that it made false statements and it denies his assertion that there are “more than 100 pages of emails” which demonstrate that the OEED’s investigator made false statements. WPU contends that because the petitioner has the burden of proof in this matter, he is required to submit documentation to

support this claim. However, because he has not done so, he has failed to satisfy his burden of proof. WPU further argues that the petitioner's assertions about the qualifications of his successor in the "Director of Purchasing" position are too vague to merit reconsideration. It also claims that the petitioner is ignoring evidence that his race was not a factor in his compensation and that there were several African-American "non-union higher education managers" who were compensated at a higher rate than him, even though these individuals were less experienced. Moreover, WPU maintains that the petitioner's claim that it had a duty to advise him about his classification appeal rights was rejected by the Commission in its prior decision, which noted that on December 4, 2014 he signed a certification that he had reviewed the instructions to a Position Classification Questionnaire he completed. Finally, WPU submits that the Diane B. Allen Equal Pay Act does not apply to the instant matter as it did not become effective until July 1, 2018, more than a year after his March 2017 complaint and his June 30, 2017 retirement, and it does not contain a retroactive application clause.

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 and the reasons that such evidence was not presented at the original proceeding. A review of the record reveals that the petitioner has not met the standard for reconsideration.

In the instant matter, the petitioner does not present any new evidence or additional information that would change the outcome of his case. Moreover, he has not shown that the Commission made a clear material error in its October 3, 2018 decision. Rather, the petitioner argues that the Commission should have rejected WPU's determination as untimely because it was not rendered within 120 days of his March 23, 2017 complaint. At the time of his prior appeal to the Commission, the petitioner clearly knew when he filed his OEED complaint and when WPU issued its determination letter following the OEED investigation, but he failed to argue that WPU's determination was untimely. Thus, he may not now raise this issue on reconsideration. Regardless, while the State Policy generally requires that the investigation of a complaint be completed and a final letter of determination issued no later than 120 days after the initial intake of a complaint, it permits a State agency head to extend this time for up to 60 additional days in cases involving exceptional circumstances. *See N.J.A.C.* 4A:7-3.2(l). Although the August 8, 2017 date of WPU's determination letter was more than 120 days after the petitioner's OEED complaint, it was within 180 days of it and the petitioner has not demonstrated that his case did not involve exceptional circumstances. Moreover, there is no provision in the State Policy mandating that the petitioner's complaint be upheld if the State Policy's requirements are not fulfilled. *See In the Matter of*

Karen Kritz (MSB, decided January 25, 2006). Accordingly, his argument concerning the timing of WPU's determination letter fails to support reconsideration of the Commission's initial determination in this matter. Similarly, the petitioner's arguments regarding the Vice President of Human Resources' reporting relationship to the Vice President for Administration and Finance does not support reconsideration, as he failed to raise this issue with his initial appeal, he has not stated why he did not previously raise this argument and he has not explained how it would change the outcome of the Commission's prior decision.

The petitioner's arguments concerning the offer of a "non-unionized higher education manager" position and WPU's proffered reasons for differences in his compensation relative to that of other employees are issues that the Commission addressed in its prior decision. Specifically, the Commission found that the the OEED conducted interviews and reviewed pertinent documents, including the employment and salary histories of the petitioner and other employees in "higher education manager" titles and CWA titles, and that the record demonstrated that the petitioner's compensation was lower than that of other Directors within WPU's Division of Administration and Finance because he served in a CWA-represented position while the other Directors were not in union-covered titles. Additionally, both the Senior Vice President of Administration and Finance and the Director of Human Resources advised the OEED that the petitioner had declined to move from a CWA-represented title to a non-unionized higher education manager title because he did not wish to relinquish the protections he received as an employee in a career service title and the regular salary increases provided for under the CWA contract. The record in the present matter does not demonstrate that a material error occurred with respect to these findings. Notably, the petitioner does not provide any evidence to corroborate his assertion that the statements of the Senior Vice President of Administration and Finance and the Director of Human Resources were untrue and he does not otherwise establish that he was subjected to disparate treatment on the basis of his race. As such, these arguments do not support reconsideration of the Commission's prior decision. Finally, the Commission finds that it does not have jurisdiction to review a complaint under the Diane B. Allen Equal Pay Act as such a complaint must be filed with the Division on Civil Rights or with the Superior Court of New Jersey. *See N.J.S.A. 10:5-13*. Accordingly, the petitioner has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request 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 17TH DAY OF APRIL, 2019

Deirdre' L. Webster Cobb

Deirdré 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

Attachment

c: L.J.
Ugonma Chukwunyere
Glenn R. Jones, Esq.
Mamta Patel
Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of L.J., William
Paterson University

Discrimination Appeal

CSC Docket No. 2018-665

ISSUED: OCTOBER 3, 2018 (ABR)

L.J., a former Assistant Supervisor 1, Administrative Services¹ with William Paterson University (WPU), appeals the determination of the Vice President for Human Resources, WPU, which found that the appellant failed 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, on March 23, 2017, the appellant, an African-American male, filed a complaint with WPU's Office of Employment Equity and Diversity (OEED) alleging that his manager, R.S., the former Associate Vice President of Administration,² discriminated against him on the basis of his race with respect to compensation and staffing in his department. Specifically, the appellant complained that even though he was one of the most senior employees in WPU's Division of Administration and Finance (Administration and Finance Division), he was the lowest paid employee holding a "Director" title and his salary increases did not mirror those of similarly situated employees. The appellant also claimed that since 2006 his requests for additional staff were repeatedly denied.

An investigation by the OEED did not find evidence to support the claim that the appellant had been subjected to differential treatment on the basis of his race. The OEED observed that the appellant served in a title that was covered by the Communications Workers of America (CWA), while the Caucasian employees

¹ The appellant retired from his position, effective June 30, 2017.

² R.S. resigned from his position, effective November 10, 2017.

named in the appellant's complaint were "higher education managers" whose titles were not covered by a union. Consequently, the appellant was not similarly situated to the other employees to whom he compared himself and was subject to the terms of the State's collective bargaining negotiations agreement with the CWA (CWA contract). The OEED also indicated that the appellant's designation as the "Director of Purchasing" was a functional title which did not have a bearing on his Civil Service classification. Additionally, the OEED noted that the appellant had the option of filing a classification appeal with this agency, which he did not do. Furthermore, the OEED indicated that on at least one occasion during the appellant's employment at WPU, the appellant had been offered the opportunity to become a "non-unionized higher education manager," but that he had declined and chose to remain in a union-covered title. The OEED's investigation found that there were legitimate business reasons why the appellant's requests for additional staff were denied and that there was no evidence that racial discrimination was a factor in that staffing decision.

On appeal to the Civil Service Commission (Commission), the appellant asserts, in relevant part, that the OEED's findings are incorrect and that its investigation was inadequate, as its determination letter incorrectly identified him as a CWA-represented employee and it fails to specify the "legitimate business reason" why his repeated requests for additional staff were denied. The appellant asserts that the appointing authority displayed "a pattern of discrimination . . . against minorities and women" with respect to compensation. The appellant furnishes a list that he obtained via an Open Public Records Act request, which details, in relevant part, the title, current salary and years of service for "Directors" and "Assistant Directors" in the Administration and Finance Division. The appellant asserts that the average salary of a "Director" was \$131,000 and that four directors with a comparable length of service to his own had an average salary of \$146,000. Further, the appellant maintains that the salary of the individual the appointing authority hired to replace him as the "Director of Purchasing" was \$120,000, \$9,000 more than he made after 25 years of service. However, the appellant maintains that he only earned \$110,979 prior to his retirement. The appellant argues that the foregoing evidences that the senior management within the Administration and Finance Division at WPU discriminated against him, as the only African-American male serving as a "Director." The appellant also contends that the appointing authority unfairly denied his requests for a higher title and improved pay "for years" and he denies that he was ever offered a "non-unionized higher education manager" position by the appointing authority. Moreover, the appellant maintains that he was a confidential employee and not a CWA member. As a remedy, the appellant seeks to be paid the difference between his salary and the salaries of other directors working in the Administration and Finance Division between July 1, 2005 and June 30, 2017 plus the corresponding amount that would have been contributed to his retirement account during that period.

In response, the OEED states that it interviewed the appellant, the Senior Vice President of Administration and Finance and the Director of Human Resources as part of its investigation. It also reviewed other documentation, including the appointing authority's non-discrimination policy, the employment and salary histories of the appellant and other employees who served or were serving in higher education manager/director roles or CWA-covered titles, emails, and the applicable CWA contract. The OEED submits that the appellant's Civil Service title of Assistant Supervisor 1, Administrative Services was represented by CWA. The OEED also argues that the appellant was not considered a confidential employee. The OEED argues that the appellant's appeal should be denied, as his complaint is time-barred, given that he waited until the year he was set to retire, nearly 20 years after his first "internal promotion,"³ to file a complaint. It also maintains that he has not demonstrated that the proffered business reasons for the appointing authority's actions were pretextual or otherwise illegitimate.

The OEED maintains that the appellant's compensation was dictated by the salary schedules set under the CWA contract that covered his title. As such, he was not similarly situated with the "non-union higher education managers" with whom he compared himself to in his OEED complaint. Rather, the OEED contends that the appellant's compensation was in parity with his similarly situated Caucasian coworkers, A.I. and J.G., who were also serving in titles that were covered by a union contract. Specifically, the OEED noted that these coworkers, with similar years of service, were also on Step 10 of their respective salary ranges. Moreover, the OEED states that race was not a factor in the appointing authority's compensation of its non-union employees, as it notes that several "non-union higher education managers" are African-Americans who were compensated at a higher rate than the appellant, even though they possessed less experience.

The OEED submits that the appellant had been offered a chance to earn a higher salary by becoming a "non-unionized higher education manager," but he declined to do so. In support, it submits affidavits from the Vice President of

³ The appellant received a regular appointment to the title of Assistant Supervisor 1, Administrative Services, effective August 7, 1993. The appointing authority subsequently sought to promote the appellant to the title of Manager 1 by submitting a Promotional Announcement Request to the Department of Personnel (DOP) dated September 17, 1998. It is noted that the DOP was the predecessor to this agency. On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Commission, abolishing the DOP and transferring its functions, powers and duties primarily to the Commission. In this decision, the former names will be used to refer to actions which took place prior to June 30, 2008. On October 6, 1998, the DOP advised the appointing authority that it could not issue a promotional announcement for the title of Manager 1 because the title had not been approved for use by the appointing authority. On December 15, 1998, the appointing authority issued a memorandum to the appellant stating that because the DOP had disallowed its use of the title of "Manager 1," it proceeded with the promotion "on an internal basis only." It indicated that his "new title and salary information [were] not officially recorded in the State's [Personnel Management Information System (PMIS)] system" and he would not accrue permanent status in the "Manager 1" title.

Administration and Finance and the Director of Human Resources who state that they had spoken with the appellant about moving to a non-unionized higher education manager title and that the appellant did not express any interest in doing so. The OEED states that the appellant acknowledged to its investigator that such a discussion had transpired, but that he could not remember when it occurred. Specifically, the Director of Human Resources indicates that the appellant was not interested in working for the then Associate Vice President of Administration without some level of job protection, such as that afforded through union and/or Civil Service status. The OEED submits that the higher salary paid to, S.S., the appellant's successor in the functional title of "Director of Purchasing" was based upon its reclassification of the position using a "higher education manager" title and S.S.'s experience, including his work developing WPU's electronic procurement card program (P-Card Program) while previously employed there between 2003 and 2006 and his subsequent experience as Ramapo College's Director of Purchasing. The OEED indicates that S.S.'s knowledge of the P-Card Program was particularly compelling, as the appellant was unable to maintain the P-Card Program after S.S. left WPU in 2006.

The OEED indicates that the appellant's title and salary adjustment requests during his career were vetted by his managers and WPU's Office of Human Resources (Human Resources) and granted when deemed warranted and appropriate under the circumstances. The OEED submits documentation from the appointing authority's reviews of the appellant's classification and compensation, including, in relevant part, memoranda from the Director of Human Resources to the appellant dated December 15, 1998 and February 19, 2015 concerning his "internal" promotions, a State Position Classification Questionnaire (PCQ) dated December 4, 2014 and a January 21, 2015 emails between the appellant and the Director of Human Resources regarding his classification review. The December 15, 1998 memo indicated that because the appellant's promotion to the title of "Manager 1" was recorded "on an internal basis only," his title would remain Assistant Supervisor 1, Administrative Services in the State's Personnel Management Information System (PMIS) and that "[i]ncrements, where applicable, [would] be based on [his] effective date in the new title." The February 19, 2015 memo advised the appellant that he was provisionally appointed to the title of Supervisor Procurement Unit, but that the action would not be recorded in PMIS, as his title in PMIS would remain Assistant Supervisor 1, Administrative Services and that there would not be an official indication at the State level of his new title or salary. In the above-noted PCQ, the appellant detailed his duties and he completed Item 13, "Certification of Employee," wherein he acknowledged, in pertinent part, that he read the instructions, which note that classification appeals are reviewed by this agency. Finally, in a January 21, 2015 email, the appellant asked the Director of Human Resources if his classification review was under review by WPU or "at the State." The Director of Human Resources sent a reply later that day stating that his classification review was being conducted by WPU.

The OEED maintains that the appellant's requests for additional staff in the Purchasing Department were denied due to its increased use of automation and e-commerce rendering it unnecessary to fill the vacant position of "Assistant Director of Purchasing." The OEED states that, aside from WPU's Budget Office which had one employee in 1992 and four employees in 2016, the sizes of the other departments within the Administration and Finance Division shrank between 1992 and 2016. For example, the Controller's Office had 21 employees in 1992 and 12 employees in 2016. By comparison, the Purchasing Department fluctuated between five and six employees from 1992 to 2011 and thereafter remained at four employees. Based upon the foregoing, the OEED contends that the instant appeal should be denied because the information and documentation gathered during its investigation demonstrate that the actions taken with respect to the appellant's requests were based upon legitimate and non-discriminatory business reasons.

In reply, the appellant, in pertinent part, describes his former duties in detail and argues that his salary should have been at least equal to the average of the other directors and more closely aligned with the experience of others with the same length of service. He argues that the OEED mischaracterizes S.S.'s experience relative to his own. He maintains that he and S.S. jointly developed the P-Card Program and that the Purchasing Department was able to oversee it without issue after S.S. left. The appellant submits that S.S. was hired based upon his recommendation and not because he possessed a higher level of experience or a greater skill set than the appellant. Furthermore, the appellant argues that S.S.'s 11 years as Director of Purchasing at Ramapo College does not compare to his 25 years of experience with the appointing authority. Moreover, the appellant reiterates that he was not a CWA member, as he never paid union dues and the CWA confirmed he was not a member. Finally, the appellant asserts that the appointing authority failed to provide him with information about the Commission's classification appeal process, which was part of its obligation as his employer.

In reply, the OEED emphasizes, in relevant part, that the appellant was covered under CWA's contracts with the State during the entirety of his 25-year tenure with the appointing authority based upon the titles he held. Consequently, he was covered under those contracts regardless of whether he paid CWA dues. It reiterates that the appellant's compensation was on par with other similarly situated Caucasian employees who were also in titles covered by the CWA contract. It states that because the appellant was at the top step of the salary range for his "internal" title of Supervisor Procurement Unit, he was only entitled to cost of living adjustments under the CWA contract. It observes that on several occasions, the appellant exercised his right to request a job evaluation and seek a reclassification of his position by the appointing authority and that he prevailed twice. It proffers that the appellant could have appealed denials of his requests to the Commission, but did not do so. It argues that the appellant is incorrect when he states that the appointing authority was at fault for his lack of knowledge about his appeal rights

because he was obligated to familiarize himself with the documents and policies that governed the terms of his employment. In this regard, it notes that Article 7 of the CWA contract states that employees could seek reclassification in accordance with Civil Service rules and that the appointing authority's website also spoke to the availability of those procedures. In support, the OEED submits a copy of the applicable CWA agreement covering the period from July 1, 2011 through the date of the appellant's retirement. The OEED reiterates that the appointing authority's denials of the appellant's requests for increased staffing was consistent with the reduction of staffing in all but one department within the Administration and Finance Division between 1992 and 2016. Lastly, it argues that the appellant has not provided evidence of systemic discrimination by the appointing authority, as he only names himself as the recipient of the alleged discrimination, rather than demonstrating that there was discrimination against a larger class.

In further response, the appellant argues, in relevant part, that the OEED's submissions in this matter evidence that it is not an unbiased arbiter of the facts and has shown it is "biased towards the [appointing authority]" by "attack[ing and] undermin[ing his] duties and responsibilities," his skills and the value of the services he provided during his 25 years of services. He maintains that his discrimination complaint is not time-barred under the State Policy, as it does not set forth a particular deadline. He submits that no African-American males currently serve in a director title at WPU because of systemic discrimination by the appointing authority. He contends that management and Human Resources withheld "information and resources" from him despite him being in constant contact with them. Additionally, he reiterates his claims that he was a confidential employee that was not represented by the CWA and that he was never offered a "higher education manager" position by the appointing authority. Finally, he argues that he experienced disparate treatment relative to A.I. and J.G., as they repeatedly received promotions and salary increases while he was denied them.

In further reply, the OEED reiterates its prior arguments. It adds that A.I., J.G. and the appellant were all treated similarly, as each of them received two promotions during the course of their employment and the appropriate compensation for all was determined in accordance with the CWA contract and their individual seniority.

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)*. 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)*. The State Policy is a zero tolerance policy. *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)4*.

Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. *See N.J.A.C. 4A:7-3.2(m)1*. Notably, *N.J.A.C. 4A:2-1.1(b)* provides that, unless a different time period is stated, an appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed.

At the outset, the appellant's claims regarding his compensation and classification are untimely. The record in this matter establishes that the appellant's compensation during his employment was based upon the appointing authority's internal classification of his position. Specifically, the appointing authority internally classified the appellant as a "Manager 1" from December 1998 to February 2015, and as a Supervisor Procurement Unit from February 2015 until his retirement, effective June 30, 2017. Additionally, the record makes clear that the appellant was aware that for nearly 20 years, the appointing authority was utilizing its own internal classification to determine his compensation and that its internal reclassification did not alter his Civil Service title or salary records with the State. In this regard, it is noted that the appointing authority furnished the appellant with a memorandum dated December 19, 1998, which indicated that his promotion to the title of "Manager 1" was being recorded "on an internal basis only," his title would remain Assistant Supervisor 1, Administrative Services in PMIS and that increments, where applicable, would be based on his effective date in the new title." Subsequently, in a memorandum dated February 19, 2015, the appointing authority advised the appellant that it was provisionally appointing him to the title of Supervisor Procurement Unit, but that the action would not be recorded in PMIS, his title there would remain Assistant Supervisor 1, Administrative Services and that there would not be an "official indication at the State level of [his] new title or salary." It is noted that given his Civil Service title of Assistant Supervisor 1, Administrative Services, he could have filed a classification appeal with the Commission, pursuant to *N.J.A.C. 4A:3-3.9*. Although the record reveals that the appellant completed a PCQ in December 2014, to request that the appointing authority reclassify him as a Supervisor Procurement Unit, there is no record of the appellant appealing his Civil Service classification to the Commission at any time since then. The appointing authority was not obligated to advise the appellant of his ability to appeal his classification to the Commission, particularly as the right to do so is published in *N.J.A.C. 4A:3-3.9*. Additionally, the appellant knew or should

have known that his classification could have been reviewed by the Commission, based upon the instructions to the PCQ, which he certified that he reviewed on December 4, 2014. Specifically, the instructions state that this agency would consider a classification appeal after the form was completed in its entirety and that if fields were left blank, it would not commence review. Further, based upon the question in his January 21, 2015 email to the appointing authority about whether his classification review was under review by WPU or "at the State," it appears that the appellant was aware of the ability to have the Commission review his classification. Moreover, it is noted that classification reviews encompass a current analysis of assigned duties and remedies derived therefrom are prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Given the evolving nature of duties and assignments, it is simply not possible to accurately review the duties an employee may have performed six months ago or a year ago or several years ago. This agency's established classification review procedures in this regard have been affirmed following formal Commission review and judicial challenges. Here, the appellant has not provided the Commission with a PCQ that is contemporaneous with his March 2017 OEED complaint or any point thereafter. Therefore, the appeal of his classification is moot.

Similarly, because the appellant had clear notice that his salary would be adjusted in accordance with the titles he received through his "internal promotions" in 1998 and 2015 and did not appeal those changes to his compensation within 20 days, his appeal regarding that issue is also untimely. Nevertheless, as discussed below, the appellant's compensation was consistent with his internal classification.

With respect to the appellant's claim that he was subjected to disparate treatment on the basis of his race in violation of the State Policy, the Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation failed to establish that the appellant was discriminated against or subjected to retaliation in violation of the State Policy. The appellant claims that the investigation was biased and that there is sufficient evidence that the appointing authority paid him a lesser salary relative to other directors and denied his requests for additional staff because of systemic racism. The OEED's investigation of the appellant's individual claims was clearly comprehensive and its submissions on appeal extensively detail the business considerations underpinning the actions at issue. The OEED conducted interviews and reviewed pertinent documents, including the employment and salary histories of the appellant and other employees in "higher education manager" titles and CWA titles. It found no evidence that the appellant was subjected to disparate treatment on the basis of his race. Rather, the appellant's compensation was lower than that of other Directors within the Administration and Finance Division because he served in a CWA-represented position while the other directors were not in union-

covered titles. The issue of whether the appellant was considered a confidential employee is immaterial to his compensation, as each employee in the career and unclassified services must be paid within the salary range assigned to the employee's job title and an employee's pay is adjusted in accordance with *N.J.A.C. 4A:3-4.1, et seq.*, except as otherwise provided by law, rule, or action of the Commission. Consequently, as the appellant's internal title of Supervisor Procurement Unit was a CWA-covered title, his salary was governed by the salary range assigned to that title under the CWA contract, which provided his title with a lower salary relative to the salary of non-unionized higher education manager titles. However, as his title was a CWA-covered title, he was provided with salary increments and cost of living adjustments, pursuant to the CWA contract, that were not guaranteed to the individuals serving in higher education non-covered titles. Moreover, the OEED found that the appellant was treated comparably to two Caucasian former employees, A.I. and J.G., who were similarly situated, as they also served in CWA-covered titles and were compensated based upon the salary schedules established for their titles under the CWA contract. Additionally, both R.S., the Senior Vice President of Administration and Finance and the Director of Human Resources advised the OEED that the appellant had declined to move from a CWA-represented title to a non-unionized higher education manager title because he did not wish to relinquish the protections he received as an employee in a career service title and the regular salary increases provided for under the CWA contract. Finally, the OEED found that the evidence failed to support the appellant's claims that his requests for additional staff were denied on the basis of his race. Towards that end, the OEED found that changes in technology reduced the need for additional manpower in the Purchasing Department and that the changes in the staffing level were consistent with reductions in staffing in all but one department within the Administration and Finance Division between 1992 and 2016. Therefore, the Commission finds that appellant failed to support his burden of proof and there is no basis to disturb the determination of the Vice President for Human Resources, WPU.

Finally, the Commission notes that the appointing authority's practice of "internally" promoting employees to career service titles without recording them in PMIS violates Civil Service law and rules. In this regard, the appointing authority's appointments of its employees must be recorded for review and approval by this agency, as *N.J.A.C. 4A:4-1.10(a)* states that "[a]ll initial and subsequent appointments, promotions, and related personnel actions in the career, unclassified, or senior executive service are subject to the review and approval of the Chairperson [of the Commission] or designee." It is settled that an appointment is not valid or final until it is approved by this agency. *See Thomas v. McGrath*, 145 *N.J. Super.* 288 (App. Div. 1976) (Morgan, J.A.D. dissenting), *rev'd based on dissent*, 75 *N.J.* 372 (1978); *Adams v. Goldner*, 79 *N.J.* 78 (1979); *In the Matter of Donald Gates* (MSB, decided June 6, 2007). Additionally, the Commission may audit State payrolls and the payrolls of political subdivisions to determine compliance with

Title 11A, New Jersey Statutes. The Commission may order and enforce immediate compliance as necessary. *See N.J.S.A. 11A:3-8.* Further, each position in the career and unclassified services shall be assigned by the Commission to a job title. *See N.J.A.C. 4A:3-3.1(a).* Thus, the Commission has exclusive jurisdiction to determine the proper classification of positions governed under the Civil Service Act, which necessarily includes a determination as to whether the position should be designated in the career or unclassified service and if testing is required. With State Colleges, the Commission's authority to review position classifications extends to all non-professional and professional career service positions which are included within a bargaining unit in a State College, *i.e.* positions classified by aligned titles. *See In the Matter of Jillian Itri* (CSC, decided June 20, 2018). Moreover, it is noted that *N.J.A.C. 4A:10-1.1(a)* provides that "[n]o person or appointing authority shall violate the provisions of Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C." The appointing authority's "internal promotion" of the appellant to the title of "Manager 1" in 1998 after the DOP advised the appointing authority the title was not approved for its use was a clear affront to the former DOP's jurisdiction over classification of employees and its subsequent internal reclassification of the appellant's position as a Supervisor Procurement Unit was also inconsistent with the Civil Service law and rules. The Commission stresses that the failure to record State employee movements in PMIS adversely effects the Commission's system of classification for positions governed under the Civil Service Act and can have detrimental consequences on employee rights. *See In the Matter of Newark School District* (CSC, August 17, 2017); *See also In the Matter of Johanna Rios, Newark School District*, A0802-15T2 (February 23, 2017). Further, promotions of permanent employees from the noncompetitive division of the career service to the competitive division are subject to examination procedures and must be approved by the Chairperson of the Commission or designee in accordance with *N.J.A.C. 4A:4-1.1*. Accordingly, the appointing authority must cease its "internal promotion" of employees in career service titles without recording such movements and it must ensure that all promotions are made and recorded in accordance with the Civil Service law and rules. The Commission notes that a failure to do so could result in its disapproving of the salary of any person employed in violation of Title 11A, New Jersey Statutes, or Title 4A, New Jersey Administrative Code and its ordering the payment stopped. *See N.J.S.A. 11A:10-1* and *N.J.A.C. 4A:10-3.1*. Further, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2.* *See In the Matter of Fiscal Analyst (M1351H), Newark*, Docket No. A-4347-87T3 (App. Div. February 2, 1989). Any future evidence of similar activity by the appointing authority will result in such sanctions.

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 3RD DAY OF OCTOBER, 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: L.J.
Denise Robinson Lewis
Michele N. Johnson, Esq.
Mamta Patel
Records Center