



**STATE OF NEW JERSEY**

In the Matter of M.E-B., Department  
of Labor and Workforce Development

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

CSC Docket No. 2022-2604

Discrimination Appeal

**ISSUED: JUNE 20, 2022 (SLK)**

M.E-B., an Examiner, Unemployment Tax with the Department of Labor and Workforce Development, appeals the decision of an Assistant Commissioner, which was unable to substantiate her allegations that she was subject to discrimination in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, M.E-B. alleged that E.R., who is in the Senior Executive Service, denied her a provisional appointment to Senior Examiner, Unemployment Tax and a permanent appointment to Principal Examiner, Unemployment Tax based on her age as she claimed that she was more qualified than younger appointed candidates based on her years of experience with the appointing authority and her Master’s degree. The investigation revealed that M.E-B. admitted that she failed the Civil Service test for Senior Examiner, Unemployment Tax. Further, in response to the allegations, E.R. denied that the promotions had been made based on age. Instead, E.R. indicated that permanent promotional appointments were based on the Civil Service examination and provisional promotional appointments were based on interviews and ePAR scores. E.R. described the interview questions as being based on experience and the employee had to describe how various situations would be handled. E.R. believed that M.E-B. would have been permanently promoted to Senior Examiner, Unemployment Tax if she had passed the Civil Service examination because everyone that passed the test had been promoted. Additionally, the Recruitment Unit provided that the age range for those that had been promoted to

Senior Examiner, Unemployment Tax was between 33 to 71. Also, while M.E-B. alleged that individuals remained provisionally appointed to Senior Examiner, Unemployment Tax even if they failed the Civil Service test, she acknowledged that these individuals still needed to pass the test to obtain a permanent promotion in this title. Moreover, the employees permanently appointed to Principal Examiner, Unemployment Tax had been 46 to 59 years of age. Also, the interview notes indicated that M.E-B. was unable to answer several questions during the Principal Examiner, Unemployment Tax interview. Accordingly, the Equal Employment Office (EEO) was unable to substantiate the allegations.

On appeal, M.E-B. asserts that her complaint was taken out of context as she did not say that E.R. discriminated against employees within the Division of Employer Accounts, but only that she was personally discriminated against by her. Also, she indicates that she never said that there were employees who were given a provisional appointment who then failed the Civil Service examination, but were still permanently appointed. She presents that she is 64 years old, began working for the appointing authority as an Auditor in 1984, and earned her Bachelor's and Master's degree during her employment. M.E-B. states that she had two interviews for Principal Examiner, Unemployment Tax where she was more than qualified to perform the required duties for that title. However, after each interview, M.E-B. asserts that she received a low score for the interview to prevent her from being promoted. In response to this, she filed an application to take the Civil Service test and to interview for a position as a Senior Examiner, Unemployment Tax. M.E-B. contends that when E.R. knew that positions needed to be filled, she would not consider her for provisional appointments like others before the Civil Service test was administered. She indicates that she has been an Examiner, Unemployment Tax for over three years and she would like the Civil Service Commission (Commission) to look into this matter. M.E-B. believes that she has not received a fair investigation by the EEO.

In response, the EEO presents that there were eight open provisional positions with 24 applicants meeting the minimum qualifications. The documentation demonstrated that promotions for Senior Examiner, Unemployment Tax were based on the Civil Service test results and the provisional appointments were based on interview scores and performance assessments. The interviews were conducted by H.F., a 65-year old former Supervising Examiner, Unemployment Tax who is now retired, and L.M.<sup>1</sup>, who is now retired, B.L., a 55-year old Supervising Examiner, Unemployment Tax, and E.R., who is 55. M.E-B. received interview scores of 12, 18, 15, and 11 for a total of 56 points and the interview scores for all the candidates ranged from 47 to 89. The investigation indicated that all candidates that passed the Senior Examiner, Unemployment Tax Civil Service test were appointed, with ages ranging from 32 to 71, and M.E-B. acknowledged that she did not pass the test. Regarding the Principal Examiner, Unemployment Tax permanent appointment, the

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<sup>1</sup> Personnel records did not indicate L.M.'s employment.

EEO presents that the interview panel consisted of A.D., a 62-year old Chief of Contributors Service, M.N. a 63-year old<sup>2</sup> Chief of Unemployment Benefits, UI/DI, and E.R. M.E-B. received interview scores of 28, 25 and 23 for a total of 75 and the range for scores was 75 to 114. Further, M.E-B. was unable to answer several questions and received one point for several answers from each interviewer. The EEO found that the questions were not outwardly biased, the top four candidates were promoted, the age ranges were from 46 to 59, and the fifth (106 score) and seventh (101 score) ranked candidates had been 62 and 66 years old, respectively.

The EEO found that M.E-B. did not provide any objective evidence to substantiate her claim. Further, the investigation revealed that the 14 candidates ultimately promoted to Senior Examiner, Unemployment Tax consisted of five employees in their 30's, four in their 40's, three in their 50's, two aged 62 and one aged 71. Additionally, the ages of the candidates appointed to Principal Examiner, Unemployment Tax were 46, 47, 55 and 59. Also, the candidates were all asked the same questions and E.R.'s scoring of M.E-B's interviews did not deviate greatly from the other panelists.

In reply, M.E-B. asserts that she has worked tirelessly since 1984 and has a Master's degree and, therefore, is more qualified than younger employees who were appointed. She requests to be promoted, either provisionally or permanently. M.E-B. provides a list of the employees in her Division who have been provisionally or permanently appointed.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon age will not be tolerated. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

*N.J.A.C.* 4A:7-3.2(m)4 provides that the appellant shall have the burden of proof in all discrimination appeals brought before the Commission.

In this matter, M.E-B. claims that E.R. discriminated against her due to her age by appointing younger, less qualified candidates for a provisional appointment as

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<sup>2</sup> While the EEO's response indicates that M.N. is 56, personnel records indicate that he is 63.

a Senior Examiner, Unemployment Tax and a permanent appointment as a Principal Examiner, Unemployment Tax. She believes that she was more qualified than younger appointed candidates based on her years of experience and Master's degree. However, the investigation revealed that M.E-B. was not appointed to these positions because her interview scores were in the lower range for both positions and all the interviewers, including E.R., had similar interview scores for M.E-B. Further, it was noted that M.E-B. was not permanently appointed as a Senior Examiner, Unemployment Tax because she did not pass the test. Moreover, the investigation did not reveal any disparate impact against older candidates in the appointment process as similarly aged, or even older candidates than M.E-B. were appointed. The Commission notes that M.E-B. has no automatic right to a provisional or permanent appointment based on her years of experience or education. Instead, it finds that M.E-B. has not provided one scintilla of evidence that her non-appointments to these positions was based on age or any other discriminatory or invidious reason.

### 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 15<sup>TH</sup> DAY OF JUNE 2022

*Deirdre' L. Webster Cobb*

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