



STATE OF NEW JERSEY

In the Matter of P.B., Department of
the Treasury

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

CSC Docket No. 2023-1487

Discrimination Appeal

ISSUED: September 20, 2023 (HS)

P.B., a State Budget Specialist 4, Department of the Treasury, appeals the determination of the Director of Administration, which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a female, filed a complaint with the Equal Employment Opportunity/Affirmative Action Office (EEO/AA) based on age and sex/gender against R.C., a male, and J.S., a female, both of the Senior Executive Service (SES).¹ The appellant and respondents were assigned to the Office of Management and Budget (OMB). The appellant alleged as follows. She had worked for the OMB for 21 years and had been in the State Budget Specialist 4 title since 2007. OMB recently upgraded the title to have a supervisory role. There were five employees in the title, and they, but not the appellant, had all been offered the supervisor role. The appellant maintained that she was by far the oldest and had been in the title the longest. Additionally, R.C. called her a “chick” and said, “I know what type you are.” When the appellant responded, “What type is that?” R.C. did not respond.

In response, the EEO/AA opened an investigation, which included witness interviews and the collection and review of pertinent documents. The investigation

¹ R.C. was appointed to the SES, effective January 19, 2019. J.S. was appointed to the SES, effective November 24, 2007, and separated from State service, effective December 31, 2022.

did not reveal any evidence to substantiate the appellant's claim that she was subjected to discrimination/harassment based on age or sex/gender. A witness indicated that the State Budget Specialist 4 title was not altered to a "supervisor" title. Rather, supervisory responsibilities were an added function of the title. The witness indicated that the appellant was the only staff member left in that existing title and not working the capacity of the title. For Civil Service purposes, per the witness, the appellant was given the title of State Budget Specialist 4 in order for her to become permanent. In addition, the respondents and witnesses confirmed that the Information Technologies (IT) Department at OMB, where the appellant worked, had never had a supervisor and did not need a supervisor, and the appellant's title of State Budget Specialist 4 was a "supervisory" title. Furthermore, relevant parties indicated, and the appellant confirmed, that she did not want to supervise any of her co-workers, so she did not apply to be the IT Department manager, which was R.C.'s position, and just wanted to be promoted. The investigation found that there had never been a supervisor at the IT Department, only a manager, which was the position that R.C. held that the appellant did not apply for. Further, the investigation confirmed that the respondents were not responsible for the decision to provide the employees with the State Budget Specialist 4 title with supervisory responsibilities over the appellant as it was a decision made by this agency. With regard to the allegation that R.C. referred to the appellant as a "chick," he denied making the comment to the appellant, and none of the witnesses interviewed confirmed hearing the comment being made. As such, the appointing authority did not substantiate a violation of the State Policy by the respondents. However, the appointing authority did confirm the appellant's allegation that J.S. yelled and embarrassed staff. The appointing authority indicated that while such conduct did not touch the State Policy, the conduct would be addressed.

On appeal to the Civil Service Commission (Commission), the appellant questions the relevance of the IT Department's not previously having a supervisor. She proffers that the real issue is that she was not even offered the role and that this was a blatant disregard for what she thought were Civil Service guidelines. In the appellant's view, everyone at the same title should have been offered the role and management should not have been able to pick and choose who in the title should be given the opportunity. Regarding the IT Department manager position, the appellant states that, if it must be known, she did not apply because of her relationship with J.S. The appellant maintains that she did not want to apply for a job working directly for someone who was hostile and incredibly mean to her. She states that J.S. had already negatively impacted her life, so she did not want to put herself in the direct firing line for more abuse. Concerning the allegation that R.C. referred to her as a "chick," the appellant claims to have two employees that were included in the same meeting who can corroborate her account. The appellant states that she is sure they will remember. The appellant seeks various remedies.

In response, the appointing authority indicates that it stands behind its thorough investigation and determination with no support for a reversal having been made.

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)*. It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*. 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.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. The appointing authority appropriately analyzed the available documents and witness interviews in investigating the appellant's complaint and concluded that there was no violation of the State Policy. While the appellant may question the relevance of the IT Department's not previously having a supervisor, it should be noted that appointing authorities have the right to determine the organizational structure of their operations. As such, that the investigation and determination considered how the relevant office was traditionally organized is not of concern. The investigation found no evidence that the appellant's not receiving a supervisor role was related in any way to her membership in a protected category, and the instant appeal does not call that finding into question. Regarding the IT Department manager position, the investigation revealed that the appellant never applied. On appeal, the appellant acknowledges that she was deterred from applying due to J.S.'s hostility and abuse. The investigation, it is admitted, confirmed that J.S. yelled and embarrassed staff. But, regrettable as such behavior may be, unprofessional behavior and disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Concerning the allegation that R.C. referred to her as a "chick," there were no confirming witnesses in the investigation. The appellant claims on appeal that there are two employees who can corroborate the allegation. However, it bears repeating

that *the appellant* has the burden of proof in this appeal. The appeal process afforded her the opportunity to present evidence and arguments, yet she has not offered any statements from the referenced employees or even named them. As such, the appellant's assertion that corroborating witnesses exist is too general to warrant intervention. Accordingly, the investigation was thorough and impartial; no substantive basis to disturb the appointing authority's determination has been presented; and, as such, there is no need to discuss the appellant's requested remedies, many of which, even if she were successful in her appeal, are not available for the Commission to award.

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 20TH DAY OF SEPTEMBER, 2023

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