



STATE OF NEW JERSEY

In the Matter of S.B.,
Department of Corrections

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

CSC Docket Nos. 2022-2593

Reconsideration

ISSUED: September 20, 2023 (JET)

S.B., an Assistant Social Work Supervisor with the Department of Corrections, requests reconsideration of the final administrative decision rendered on March 23, 2022, which determined that he failed to support a finding that he had been subjected to a violation of the State Policy Prohibiting Discrimination in the Workplace (State Policy). *See In the Matter of S.B.* (CSC, decided March 23, 2022).

In the prior matter, S.B. alleged, in relevant part, that his supervisor, A.R., a Social Worker 2, Secured Facilities, subjected him to discrimination on the basis of disability and subjected him to retaliation. S.B. alleged that A.R. attributed negative stereotypes to him based on her perception of his disabilities; that A.R. did not monitor another employee in the same way she monitored him; that he was suspended for 15 days shortly after he filed a discrimination complaint¹; that his work assignments were improperly increased and were not reduced to accommodate him while on Family and Medical Leave Act leave; that his September 2020 request to work from home was improperly denied by L.C., a Director and member of the Senior Executive Service; and that he was retaliated against for filing a prior discrimination complaint. The Equal Employment Division (EED) determined that there was no violation of the State Policy, and S.B. appealed the determination to the Civil Service Commission (Commission). In its March 23, 2022 decision, the

¹ As noted in the prior decision, an October 21, 2019, Preliminary Notice of Disciplinary Action (PNDA) recommending a 15-day suspension was issued against S.B., and after a departmental hearing was conducted, a December 31, 2019, Final Notice of Disciplinary Action (FNDA) was issued upholding the suspension.

Commission found that S.B. was not subjected to discrimination or retaliation in violation of the State Policy.

In his request for reconsideration, S.B. states that he is presenting new evidence in this matter to show that he was subjected to discrimination in violation of the State Policy. In this regard, he contends that a PNDA was issued recommending a five-day suspension on January 21, 2020, charging him with insubordination, refusal to accept an order, and violation of a rule, policy or procedure. S.B. indicated that the above-noted disciplinary charges were issued shortly after he submitted the underlying EED complaints, and the hearing officer recommended that they be dismissed on September 20, 2021. S.B. contends that since the charges were filed close in time to his complaint and then dismissed, he has established a *prima facie* case with respect to his claims.² In this regard, S.B. maintains that his supervisor's action of imposing or threatening to impose disciplinary action against him for other than legitimate business reasons constitutes retaliation under the State Policy. Moreover, S.B. asserts that he testified at the departmental hearing that he was subjected to discrimination and retaliation, and the hearing officer informed him that such concerns should properly be referred to the EED for review.³

Additionally, S.B. maintains that several material errors occurred in the prior matter that warranted forwarding it for a hearing at the Office of Administrative Law (OAL). Specifically, S.B. maintains that the Commission erred in failing to consider the timeframe when he filed the underlying EED complaints in in comparison to the time that disciplinary charges were issued against him in October 2019 and in January 2020; that the prior decision simply "rubber stamped" the EED's findings as true without properly reviewing the evidence; that the prior decision indicates that "voluminous information" was reviewed without stating with any particularity what information was reviewed; and that the "serious concerns with respect to him hanging out near his supervisor's window" should have been addressed at a hearing. S.B. contends that the Commission in the prior matter should not have had any safety concerns with respect to his continued employment at Southern State Correctional Facility, as he was not eavesdropping on his supervisor.⁴ S.B. explains that the windows in his supervisor's office are wide, and he observed her treating other employees differently than him. S.B. also contends that he was "misquoted" in the prior decision with respect to the statement "the incidents keep happening," and he clarifies that what he meant was that the incidents occurred for over a year on a continuous basis. S.B. maintains that the

² S.B. states that he filed the underlying EED complaints in April 2019, May 2019 and November 2019, and disciplinary charges were issued against him in October 2019 (15-day suspension) and January 2020 (five-day suspension)

³ A review of the hearing officer's September 20, 2021, decision does not indicate such information.

⁴ S.B. contends that it appears the Commission is unaware of the office make-up of Southern State Correctional Facility, as it otherwise would have been aware that employees can see into other offices from their desks.

prior decision ignored his claims and attempted to show that he is not a reliable witness. S.B. contends that, since the prior decision indicates there were “voluminous submissions,” such information should be sufficient to consider him as a reliable witness and the underlying allegations should be accepted as true.

S.B. also maintains that applicable law supports that the matter should have been forwarded for a hearing, citing *In re M.M.*, 463 *N.J. Super.* 128 (App. Div. 2020). S.B. states that the failure to forward the matter for a hearing has resulted in the “spoilage” of evidence, which has unfairly prejudiced him, improperly delayed the case, and caused irreversible damage. S.B. contends that witness recollection of what occurred is fading, and he is concerned about the destruction of evidence due to the passage of time. S.B. argues that forwarding the matter for a hearing would ensure the Commission’s review is as thorough as a court of law.

Additionally, S.B. submits several opinions regarding the Commission, including: referring to the Commission members are “idiots” since the prior matter was not referred for a hearing; that he disagrees that the make-up of the Commission members constitutes a group of diversified individuals; that the Commission is up to its “old tricks;” that the Commission members are as “sharp as bowling balls;” and that he fully intends to pursue his claims in other legal forums.

In response, the EED maintains that S.B. has not met his burden of proof of reconsideration in this matter, and the prior decision should be upheld.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. 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. *N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, with respect to S.B.’s request for a hearing, discrimination appeals are treated as reviews of the written record. *See N.J.S.A.* 11A:2-6b. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C.* 4A:2-1.1(d). No material issue of disputed fact has been presented in this matter which would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978). *See also, In the Matter of J.L.* (CSC, decided October 19, 2016). Moreover, S.B.’s reliance on *M.M.*, *supra*, is misplaced. In that matter, the appellant, a Clinical Psychologist filed a complaint under the State Policy, alleging that a male Clinical Psychiatrist had

sexually harassed and discriminated against her. She also alleged retaliation. On appeal, the Commission found no violations of the State Policy. The Appellate Division remanded the matter finding that a hearing should have been held, noting that material issues of disputed facts existed since several female witnesses denied the actions alleged, and the detailed assertions of the appellant were only cursorily addressed by the appointing authority. The facts of the instant matter are distinguishable, as detailed submissions have been previously provided by the parties, and S.B. has presented no witnesses or documentation that provide for a basis to determine that there is a material dispute of facts that cannot be resolved on the written record.

In this matter, S.B. has not satisfied the standard for reconsideration. S.B. has provided no new evidence or information that would change the outcome of the prior matter, nor has he shown that a material error occurred. With respect to the disciplinary charges, although S.B. claims that the September 2021 hearing officer's decision that dismissed the January 2020 charges was not available to him at the time he filed the prior appeal, the Commission is not persuaded. Since the Commission's prior decision was issued on March 23, 2022, and the hearing officer's decision was issued in September 2021, S.B. has ample time to submit such information in the prior matter. As such, any arguments that such submissions constitutes "new evidence" is misplaced.

Further, the dismissal of the disciplinary charges underlying the originally proposed five-day suspension, in and of itself, does not establish that S.B. was singled out in the workplace, or that he was discriminated against or subjected to retaliation in violation of the State Policy. Although S.B. argues that he was subjected to retaliation by his supervisor due to the disciplinary charges, absent evidence of discriminatory or retaliatory motivation on the part of S.B.'s supervisor, no violation can be sustained. The mere proximity of the filing of the disciplinary charges to his complaints is insufficient, without evidence that he was subjected to discrimination or retaliation, to sustain a violation of the State Policy. This is especially true given that the 15-day suspension was upheld after a departmental hearing and the EED found no retaliation. Although S.B. argues that he raised his discrimination concerns at the departmental hearing level, and he was advised to address such concerns with the EED, it was within the EED's purview to investigate S.B.'s complaint. While S.B. may disagree with the outcome of the EED's underlying investigation, he had the full opportunity to present arguments and documentation in support of his claims during the EED investigation and in the instant appeals, and he has not established that either disciplinary matter was brought forth based on either discriminatory or retaliatory motives.

With respect to S.B.'s contentions that several material errors occurred in the prior matter, the Commission disagrees. Although S.B. takes issue with some of the Commission's concerns in the prior matter pertaining to him "hanging out by his

supervisor's office," such concerns do not constitute a dispute of a material fact that warrants forwarding the matter for a hearing. Rather, the Commission noted its concerns based on the legitimate business needs of the agency and information presented in the record. Moreover, such concerns do not constitute a finding that a violation of Civil Service law or rules occurred, and as such, do not require further proceedings. With respect to S.B.'s concerns pertaining to what "voluminous information" was reviewed, such information is set forth in detail in the prior decision and in the various submissions from the parties. Moreover, S.B. has not pointed to any specific deficiencies in the prior matter that would show that a material error occurred, nor has he presented a scintilla of information in this matter to show that he was treated differently from similarly situated employees. The Commission is satisfied that S.B. had a full opportunity to submit arguments on his behalf, and there is no substantive evidence to show that he was subjected to a violation of the State Policy. Moreover, S.B.'s allegations have once again been reviewed, and he has failed to present any substantive evidence that the Commission's prior decision was contrary to the evidence presented. Accordingly, S.B. has failed to present a sufficient basis for reconsideration of the Commission's prior decision.


One final matter warrants comment. S.B.'s unsolicited and gratuitous opinions and remarks regarding the Commission were not considered in this matter. Although S.B. may disagree with the Commission's prior decision, as noted above, he has had the full opportunity to present his arguments and documentation, and the Commission is satisfied that the prior decision was proper based on the evidence in the record. Finally, as indicated in the prior decision, S.B. is free to pursue further courses of action in other legal forums at his discretion.

ORDER

Therefore, it is ordered that the request for reconsideration 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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