



STATE OF NEW JERSEY

In the Matter of S.R., Department of
the Treasury

CSC Docket No. 2024-2158

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

Discrimination Appeal

ISSUED: August 14, 2024 (SLK)

S.R., a Data Entry Operator 4 with the Department of the Treasury, appeals the determination of an Equal Employment Opportunity/Affirmative Action Officer (EEO), which was unable to substantiate that he was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, S.R., an African-American male, alleged that M.H., a Caucasian female Chief of Operations Treasury, discriminated and retaliated against him because he is an African-American male supervisor. Specifically, he questioned how S.C., a Caucasian female who was a Technical Assistant, Department of State, could have been appointed as a Supervisor Data Preparation instead of him when he has 45 years of service with the Division of Revenue, including over 20 years as a data entry supervisor, and an impeccable resume that conveyed the criteria for the subject promotional position. He believed that the appointment was based on deceit, racism, and bias. Additionally, M.H. stated in a staff meeting that she would like to apologize to S.C. for an email that a “disgruntled employee” sent to everyone. S.R. asserted that M.H. stated during the meeting that there were certain guidelines that she and human resources have to abide by according to each person’s resume and that S.C. brings a lot of expertise to the position. S.R. wanted to know how S.C. was more qualified than him. Further, S.R. alleged that M.H. retaliated against him due to a complaint he filed against W.C., a Caucasian male Assistant Division Director, who sat on the interview panel and S.R. reported to, as M.H. is W.C.’s friend and colleague. S.R. also asserted that this was an act of racial discrimination.

Regarding S.R. not being promoted to Supervisor Data Protection, the investigation revealed that despite S.R. submitting his resume late, he was still interviewed for the position. However, the information provided that, out of eight candidates, S.R. was one of the lowest scoring candidates. Further, S.R. failed to take advantage of training offered in areas that would have helped him perform the necessary tasks for the position and stated “back in the day we were just handed these positions” during the interview. Additionally, M.H. denied that the decision not to promote S.R. was based on his race and reported that the position was awarded to the most qualified individual. Therefore, this allegation was not substantiated.

Concerning the staff meeting and the “disgruntled employee” email, which S.R. reported that he did not send, the EEO found that M.H. had legitimate business reasons for addressing this email to staff during the meeting that were not discriminatory. A witness asserted and M.H. confirmed that M.H. referenced the email during the meeting, but she did not use the word “disgruntled.” M.H. explained that she announced S.C.’s promotion at the meeting and addressed the email that stated that other people were more deserving. She stated that it was unfortunate that everybody was talking about the email and addressed it during the staff meeting to indicate how they were moving forward. The EEO found M.H.’s explanation of addressing the email during the staff meeting to be credible and appropriate based on her supervisory position and not discrimination/harassment against S.R.

Referring to S.R.’s retaliation claim, the investigation did not reveal any prior State Policy history between S.R. and M.H. Further, the investigation found no evidence that S.R. was not promoted to Supervisor Data Preparation due to retaliation. Moreover, M.H. denied having any knowledge that she was aware that S.R. filed a State Policy complaint against W.C. before S.R. interviewed for the position. Therefore, the EEO was unable to substantiate any of the allegations.

On appeal, S.R. asserts that the EEO did not conduct a thorough investigation as the determination yielded multiple inconsistencies and untruths. S.R. notes that he has been employed by the Division of Revenue for 45 years, including 21 years as a data entry supervisor. S.R. states that his non-appointment as a Supervisor Data Preparation is triggering as he compares it to the past where African American males’ applications and/or resumes were automatically thrown into trash bins after an interview because Corporate America refused to employ them, including those who served in military combat.

Additionally, S.R. highlights that in the determination letter, it was indicated that M.H. stated that S.R. reported to W.C. and her, while he presents that he only directly reports to W.C. Concerning that he allegedly submitted his resume late for the subject position, he provides that he submitted his resume on March 3, 2023, and the deadline was March 13, 2023. Therefore, he contends that this statement conveys

a false narrative that M.H. but offered him an accommodation, which conceals her bias and discriminatory behavior towards him. Referring to his low interview score, S.R. asserts that M.H. is untruthful and her interview scores should be questioned and given heightened attention. He notes that he has not been given the evidence that S.C. is more qualified than him. Regarding training, S.R. states that it is untrue that he did not take advantage of offered training and he requests the evidence that he was offered training and turned it down. S.R. believes that M.H. has taken great measures to hinder African Americans from promotions and access to job education resources. He presents, T.A., an African American male who is a Data Entry Operator 2, and J.R., an African American female who is a Data Entry Operator 2. S.R. claims that M.H. got upset when she learned that they enrolled in training courses offered by this agency, and she attempted to cease their enrollments. He indicates that T.A. engaged with other parties to ensure that he could proceed with the course. Regarding M.H.'s statement that S.C. was the most qualified candidate and the investigation did not have any evidence to find otherwise, S.R. submits documentation to dispute these claims. S.R. denies that he ever said, "Back in the day we were just handed these promotions," as he was never just handed a promotion. He notes that he was ranked 12th for a Supervisor Information Recording and Control Treasury examination, which is a position which S.C. does not meet the eligibility requirements. S.R. asserts that he received his current position through his work ethic, leadership skills, and knowledge, and he states that he displayed great interview etiquette highlighting his experience, which includes training and supervising 60 new employees, and referencing his impeccable resume. He also presents that he co-supervised with a Supervisor Information Recording and Control Treasury. S.R. argues that it was inappropriate for M.H. to refer to D.W., an African American female who is a Data Entry Operator 3, as a "disgruntled employee," during a meeting. While M.H. denied making this statement, S.R. contends that the evidence shows that M.H. is a "pathological liar." Although the EEO claimed that M.H. was not aware of the email from D.W., he states that he attached it to his complaint, and he submits the email which stated:

Congratulations S.C. on the title of Supervisor Data Preparation. No disrespect to S.C., but it's awful funny how that job was just posted a few months ago and no test was taken, but S.C. has the title. Several people took the Head DEMO test and passed it, and it took a month shy of 3 years for anyone to obtain the position. Can anyone explain to me how that works?

S.R. indicates that none of his witnesses, J.C., an African American and Native American female who is an Intermittent Clerk Treasury, and D.R., who is an African American male who is a Data Entry Operator 3, were not interviewed, and he argues that this demonstrates that the investigation was biased. Additionally, S.R. asserts that contrary to M.H.'s denial that she retaliated against him, she was aware of his complaint against W.C. as she was copied on a March 16, 2021, letter that was in

response to S.R.'s Workplace Violence Incident Report where he received a response that his complaint falls under the State Policy and his complaint was forwarded to the EEO. Further, M.H. was copied on a March 18, 2021, letter that was in response to S.R.'s grievance that racial undertones in an email received from W.C. were harassment, and human resources was to refer the matter to the EEO. Therefore, S.R. believes that the investigation was not thorough and/or biased.

In response, the appointing authority presents that regarding S.R.'s statement that the EEO did not explain how the selected candidate is more qualified than himself, it indicates that the investigation was conducted to determine whether M.H. violated the State Policy by not selecting him and not the reasons why the candidate was selected. The appointing authority emphasizes that eight candidates were interviewed and the candidate who received the highest interview score was selected as this candidate was deemed the most qualified for the position based on her interview score and noted experience. Further, while S.R. claims that it was untrue that he did not take advantage of relevant offered trainings, the investigation revealed that at the time of the interview, the candidates were informed that there were relevant trainings and advised that they were required to submit the completion portion of their training to their supervisors for compliance, and S.R. did not submit such proof by the April 5, 2023 interview. Regarding S.R.'s two witnesses he presents on appeal that were not interviewed, the appointing authority replies that these witnesses were not provided during his interview with the EEO, and the EEO has discretion as to whether to proceed with interviews. Additionally, S.R. has not articulated what relevant knowledge that these witnesses can provide. Therefore, it concludes that any information gained from these witnesses would not change the determination. Referencing S.R.'s claim that M.H. falsely stated that she was not aware of any State Policy complaints that S.R. filed against W.C. and therefore could not have retaliated against him, it notes that the concerns that S.R. raised against W.C. were handled administratively and did not result in an investigation. Therefore, the appointing authority contends that there was no State Policy history between S.R. and W.C. Additionally, it highlights that although W.C. also interviewed S.R. for the subject promotion, he was not named as a respondent in his complaint of retaliation. Therefore, the appointing authority asserts that the investigation was thorough and there is no support to reverse the determination.

In reply, S.R. emphasizes his belief that his resume is impeccable and conveys the criteria for the subject promotion. He reiterates his request to know how a Caucasian female who is a Technical Assistant 2, Department of State, was more qualified than himself who has held a position in the Division of Revenue for 45 years, including over 20 years as data entry supervisor. S.R. highlights his stellar performance evaluations and how he has successfully worked with many superiors over the years. S.R. responds that while the EEO indicates that he was interviewed on April 5, 2023, for the subject position, he states that he was not. Instead, M.H. called him into a meeting and congratulated employees who were appointed as Data

Entry Operator 4s. Then, she stated because S.R. is an experienced supervisor who has knowledge on how to take disciplinary action against employees, he would be assigned the difficult employees. S.R. provides that S.J.C., a Caucasian male who was in the Senior Executive Service,¹ was in agreement with this arrangement. Therefore, he questions how he could be deemed unqualified for the subject promotion with the lowest interview score. S.R. states that during his intake interview for his discrimination complaint, he brought this to the interviewer's attention, but he presumes that the EEO did not find this significant. As such, he believes that this is enough evidence for M.H.'s scoring of his interview to be questioned and reevaluated. Additionally, S.R. questions how his statements, as an African American male supervisor against M.H. cannot be substantiated while her statements, as a Caucasian female are considered "factual." S.R. believes that any African American who seeks a promotion under M.H.'s leadership will receive lower interview scores than their Caucasian counterparts. Further, S.R. indicates that he observed W.C. and M.H. discussing an investigation conducted by C.T., a Caucasian female who is a Human Resource Consultant 5, concerning a discrimination complaint filed against W.C. where M.H. became extremely outraged and her face turned red. M.H. began to yell, "No she did not, no she did not say that to you." S.R. believes that M.H. became emotionally invested in the outcome of that investigation and those lingering emotions were the main driver and component of the retaliation that was geared toward him.

In a supplemental submission, S.R. provides email communication indicating that he had requested that M.H. assign him to a private office as C.T., an African American female who is a Data Entry Operator 4, and I.W., an African American female who is a Data Entry Operator 4, had been assigned private offices. S.R. states that at the time C.T. and I.W. were assigned private offices, they were "acting" Data Entry Operator 4s. He indicates that he was overlooked as a male supervisor with more seniority than C.T. and I.W., and there was an empty office that could have been assigned to him. J.R., a Caucasian female who is an Administrator Employee Relations, responded that she consulted with M.H. and W.C. and they advised that C.T. and I.W. were assigned offices because they were performing duties that required privacy such as conducting meetings, contacting vendors and other agencies for consulting on matters, and system testing processing, and S.R. was not performing such duties and seniority did not factor in the office assignments. S.R. replied to J.R. reiterating that C.T. and I.W. were "acting" Data Entry Operator 4s at the time and technically Data Entry Operators 2s. He noted his 45 years of experience and asserted that he was disregarded as invaluable. Further, S.R. claimed that a subordinate advised him that S.E., S.R.'s prior immediate supervisor who is now retired,² wanted to inform him how wrongly M.H. treated him, and he should have been assigned to an office. He asserts that there is still an open unoccupied office. Moreover, S.R. disagrees that C.T. and I.W. are performing the duties that J.R.

¹ Personnel records indicate that S.J.C. separated from employment, effective December 31, 2023.

² S.E.'s name could not be located in personnel records.

indicated that they perform as he asserts that based on Civil Service job specifications, these are duties performed by incumbents in higher-level titles and not Data Entry Operator 4s. S.R. asserts that if he does not qualify to have an office, no other Data Entry Operator 4 should either and everyone should be treated the same regardless of gender, race, or color. He claims that there should be an independent investigation concerning the alleged bias decision making in the Division of Revenue and Enterprise Services, Department of the Treasury.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, that the State of New Jersey 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 the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender, 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.

N.J.A.C. 4A:7-3.1(a)2 provides that this policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job.

N.J.A.C. 4A:7-3.1(a)3 provides that it is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, advancement appointment, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development.

N.J.A.C. 4A:7-3.1(h) provides that retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. 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.

N.J.A.C. 4A:7-3.2(m)4 provides that the burden of proof shall be on the appellant in all discrimination appeals.

In this matter, S.R. alleged that M.H. discriminated against him, an African American male supervisor, by not promoting him to Supervisor Data Preparation in favor of S.C., a Caucasian female, due to his race, gender, and/or retaliation for a prior State Policy complaint that he filed against W.C., who he states is M.H.'s friend and colleague and was present during the interview. He submits his overall greater years of experience, as well as his over 20 years of experience as a data entry supervisor. Additionally, S.R. highlights that he was advised that as a Data Entry Operator 4, he was assigned the most difficult employees to supervise and S.C.'s title prior to her promotion was Technical Assistant 2, Department of State, which is a lead worker, but not supervisory title. Initially, it is noted that as S.C. met the subject promotional examination eligibility requirements, she is deemed qualified for the subject promotion. Moreover, under Civil Service law and rules, a candidate is not automatically deemed "more qualified" because that candidate has more years of overall seniority and/or more years of service in a specific or higher title than the other candidates, and other criterion, such as performance on an interview, is a valid method to determine who to appoint for a specific position. Further, the record indicates that S.C. was deemed the most qualified for the subject position because she had the best interview performance among the eight candidates as well as her experience. Additionally, the record indicated that S.R. had a lower score on the interview, and he failed to provide evidence that he completed relevant training, which although he was given an opportunity to do so, he did not rebut on appeal. Also, the mere fact that S.R., a Data Entry Operator 4, a supervisory title, was given the responsibility to supervise challenging employees, only signifies that M.H. thought that he was able to handle a responsibility that was appropriate for his current position and does not automatically signify that he is a more qualified candidate for another position. Furthermore, concerning his claim that his two witnesses were not interviewed, the appointing authority responded that these witnesses were not presented with his complaint and, even on appeal, he has not explained how these witnesses possess relevant knowledge which change the outcome of the determination.

Referring to the email that was sent by D.W., an African American female, where she questions S.C.'s promotion, the investigation did not produce any confirming evidence that M.H. labeled the sender a "disgruntled employee." Regardless, as this email was sent to coworkers, M.H. had a legitimate business reason to address this email at a meeting so that the staff could move forward. Concerning S.R.'s retaliation claim, even if the Civil Service Commission (Commission) were to find that his claim implicated the State Policy since M.H. had been copied on letters referring his complaints against W.C. to the EEO, the record indicates that S.C.'s appointment and S.R.'s non-appointment to the subject promotional title was based on legitimate business reasons and not retaliation.

Refencing S.R.'s complaint that he was not provided a private office while others who held the same title were, initially it is noted that this appears to be a new allegation that was not provided with his complaint. Additionally, the two employees who were assigned offices were African American, so it is unclear if he is making a complaint based on his membership in a protected class or just his belief that he was treated unfairly. Regardless, there is no requirement under Civil Service law and rules that employees who hold the same title have the same office environment, and there was nothing unfair or inappropriate for employees who perform duties that require privacy to be assigned private offices and for S.R. not to be assigned a private office when he does not perform such duties. Also, S.R. has not provided any documentation from S.E. that she thought S.R. was treated "unfairly," and unfair treatment alone, without confirming that such treatment is based on one's membership in a protected class, is not a violation of the State Policy. Further, although S.R. disputes that these employees were not performing the examples of work that were given to justify the office assignments because he believes such duties are only performed by incumbents in higher titles, while the Commission makes no determination as to whether the presented duties are considered in-title duties for Data Entry Operator 4, it is not uncommon for an employee to perform some duties which are above or below the level of work is ordinarily performed.

In other words, S.R. has not presented any confirming evidence that indicates that any decision M.H., or anyone else, made based was based on S.R.'s membership in a protected class and/or in retaliation for a prior State Policy complaint. Mere speculation, without evidence, is insufficient to support a State Policy violation. See *In the Matter of T.J.* (CSC, decided December 7, 2016). Instead, S.R. describes a series of events in which he disagrees with his superiors' decisions. However, disagreements between co-workers cannot sustain a violation of the State Policy. See *In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Accordingly, S.R. has not met his burden of proof.

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 14TH DAY OF AUGUST, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: S.R.
Darlene Hicks, Esq.
Division of EEO/AA
Records Center