



STATE OF NEW JERSEY

In the Matter of J.H., Department of
Labor and Workforce Development

CSC Docket No. 2025-770

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

Discrimination Appeal

ISSUED: December 18, 2024 (SLK)

J.H., an Employment and Training Specialist 1 with the Department of Labor and Workforce Development, appeals the determination of a Chief of Staff, which was unable to substantiate that she was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, J.H., an African American female, alleged that she was subjected to race discrimination as she claimed that L.H., a Caucasian female who is an Assistant Commissioner, only hires Caucasian woman and failed to promote or hire her. Specifically, J.H. alleged that L.H. subjected her to disparate treatment based on race when she failed to promote her to Supervisor, Employment and Training Specialist and an Executive Assistant 4 position within the Office of Research and Information unit.¹

Concerning posting #2021-258, the investigation revealed that L.H. was not part of the interview panel and had no impact in the hiring process. Additionally, no appointment was made as the selected candidate turned down the position of Supervisor of the Employment and Training Program Contracting Unit, and the position remains vacant.

¹ The determination refers to postings #2021-258, #2022-137, #2022-309, and #2022-318. As these are not Civil Service numbers, presumably these postings were vacancy announcements that were posted by the appointing authority for provisional appointments and were not governed by this agency.

Regarding posting #2022-137, the selection paperwork was not available, and no determination could be made whether J.H. was subjected to discrimination. Referring to posting #2022-140, although J.H. applied and was interviewed, no candidates were selected, which resulted in a reposting under #2022-309, where J.H. was one of eight candidates. The record revealed that another candidate was selected based on that candidate's interview scores. Further, the evidence revealed that the interview panelists scores and comments were consistent, and each panelist provided rationales for their individual scores. Also, while L.H. was on the panel as a moderator and asked follow-up questions to each candidate, there was no evidence that she impacted the outcome of the interview, or she failed to promote her due to race. Additionally, J.H. applied for posting #2022-318; however, the appointing authority's Human Capital Strategies determined that she was ineligible as she lacked the required experience, and the evidence indicated that L.H. was not on the interview panel or had any influence on the interview outcome. Therefore, the appointing authority determined there was no evidence to support J.H.'s claim that she had been subjected to race discrimination when L.H. did not promote her.

Referring to J.H.'s belief that L.H. only promoted Caucasian woman, L.H. participated as a panelist on at least four interviews between 2023 and 2024, and the Office of Diversity and Compliance observed at least one of the interviews. The record revealed that the candidates hired for those positions were one Caucasian female and two African American females. Therefore, the evidence did not support J.H.'s claim that L.H. only hires and promotes Caucasian females.

On appeal, J.H. reiterates that L.H. subjected her to disparate treatment based on race when she failed to promote her to Supervisor, Employment and Training Specialist and Executive Assistant 4. Further, she contends that after she filed her complaint, she was subjected to increased hostility and efforts were made to shift perceptions regarding the allegations. J.H. notes that she applied for the supervisor position approximately six times, was twice granted an interview, and one of these interviews led to a Caucasian female receiving a higher score who declined the position. Further, the determination provides no explanation regarding the second interview as the paperwork was lost and the position remains vacant. Concerning posting 2022-318 which was for an Executive Assistant 4 position, she states that she met the eligibility requirements for the position but was not interviewed. Instead, she presents that a Caucasian female candidate, who is the daughter of a Labor Relations executive, was appointed. J.H. indicates that while the determination states that the incumbent was chosen based on years of service, she highlights that she began her service with the appointing authority in 2016 while the appointed candidate began in 2016, which contradicts the stated justification for the hiring.

Further, J.H. emphasizes that she alleged that L.H. only hires and promotes Caucasian females to positions of leadership and not all positions. J.H. contends that the need to have the Office of Diversity and Compliance observe one of the interviews

where L.H. was a panelist suggests that there have been other discrimination complaints against L.H. Additionally, while one Caucasian female and two African American females were hired, J.H. states that both African American females were initially hired before L.H.'s tenure, served the Office of Research and Information for several years, and left due to lack of promotional opportunities or being passed over for said opportunities before being rehired. J.H. asserts that if only two African American females were hired between 2023 and 2024, a comparison should have been made related to how many Caucasian females were hired and/or promoted, since her allegation was based on hiring and promoting Caucasian females for positions of leadership. She believes that L.H. only re-hired the two African American females after her allegations of racial discrimination, and these hires were only done so to counter her claims. J.H. reiterates that L.H. has failed or refused to fill vacant positions that resulted from excessive turnover in her unit. J.H. argues that these inactions have resulted in an excessive amount of additional work, including out-of-title work without compensation, and were assigned under the threat of disciplinary action. She presents that the Office of Research and Information has several vacancies which it has refused to fill while simultaneously hiring and promoting Caucasian woman to positions of leadership while awarding themselves excessive salaries which has had a disparate impact and should be examined closer.

J.H. notes that she initially presented her concerns to the Office of Diversity and Compliance, Labor Relations, Human Resources, the Commissioner's Office, and the Office of the Governor. Thereafter, the Office of the Governor forwarded the matter to the Legislative Liaison, which then forwarded it to this agency, which resulted in her classification appeal to be re-opened. She states that the unit now has two Administrative Analysts, has expressed interest in a third, and no performance evaluations have been performed by supervisors across the board, which was the reason for the denial of her classification appeal. J.H. also claims that L.H. neglected to submit her classification appeal. She contends that she has been subjected to retaliatory practices which include no performance assessment reviews, multiple denial of her requests for lateral transfer, denial of agreed compensatory time earned, denial of overtime needed to meet deadlines associated with State and federal regulations, being forced to produce work in and out-of-title, and being forced to produce another employee's work under the threat of disciplinary action. J.H. asserts that despite her continuous production of work, both in and out of title, during the pandemic to date unlike other employees in her unit, she was denied leadership positions based on race.

She asserts that she has repeatedly been denied promotional opportunities based on race, including, but not limited to two positions identified in the classification appeal. She contends that vacancy posting #2022-318 was filled based on nepotism and race and the justifications given related to qualifications are untrue which resulted in unfair labor practices to more qualified candidates. J.H. emphasizes that losing paperwork is not a justifiable answer. Further, she believes

that not filling the second Supervisor, Employment and Training Specialist position, after repeatedly encouraging her to apply while simultaneously inundating her with additional responsibilities is egregious and manipulative. Moreover, while after discrimination complaints were filed, two African American females were hired, she states that this does not remedy that she was not hired for an Administrative Analyst 4 position and was intentionally not afforded the opportunity to interview for this position, as it is a common practice to attempt to humiliate anyone who questions the lack of productivity and/or integrity of leadership. J.H. emphasizes that there was no comparison regarding how many Caucasian females were hired and/or promoted, including awarding excessive earnings, which undoubtedly poses a disparate impact. She relists the alleged hostile and retaliatory actions against as being denied several requests for a lateral transfer; lack of performance reviews in 2024, 2023, 2021, 2020 and 2017; being forced to complete unfavorable assignments under the threat of disciplinary action; being denied overtime or adequate compensation time for the production of former and current employees' work; being inundated with a senior employee's work who lacks the ability to complete work timely; being removed from access of previous systems of records that contain necessary information for the purposes of implementing appropriate actions in the current system of record, which is riddled with glitches, resulting in unnecessary complaints; her work intentionally not being forwarded to other entities in a timely manner, resulting in disgruntled providers and misplacing blame; being intentionally given negative Progress Reports that resulted in failure of Working Test Periods, after being held in a provisional title for three years and excelling in said title; and excessive turnover due to workplace hostility and the employer's inability to adequately address issues which resulted in disparate impact for employee that served the unit for years. J.H. indicates that this has had an adverse impact on her as she was diagnosed with workplace anxiety due to the hostility and was in a practitioner's care from 2021 through 2023. She asserts that she has been identified as the top performer for several years, received the Governor's Special Services Employee Recognition Award in 2019, 2020, and 2021, as well as being nominated in 2022, produces 85 percent of the work despite there being two other specialists which has caused her to have excessive work, and she contends that this should be taken into consideration regarding the subject complaint.

Additionally, J.H. submits an email where she states that she has been experiencing retaliation since human resources forwarded her concerns to the attention of Equal Employment Opportunity/Ethics, and an investigation was launched on her behalf. She notes that she did not invite labor relations into this conversation, but she complains that the appointing authority tends to misuse the unit and other entities for the purpose of framing a narrative around stereotypical attributes generally attributed to African American women.

J.H. inserts an email from the Director, Center for Occupational Employment Information which directs and formally warns J.H. to stop issuing unauthorized directives to her colleagues as it exceeds her current role and responsibilities. She

also submits her response to this email where she categorizes the directive as antagonism, she denies giving anyone directives as she explains she is just communicating with her team members, and states that if she is being accused of something, she should be afforded the proper protocols to refute the allegations. J.H. categorizes these emails as an example of escalating retaliation and bias against her.

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(h) states, in pertinent part, that retaliation against any employee who alleges that he or she was a victim of discrimination or opposes a discriminatory practice is prohibited.

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, J.H. alleges that she did not receive certain promotions based on race. Specifically, J.H. claims that L.H. subjected her to disparate treatment by not promoting her and L.H. only promotes Caucasian women to positions of leadership. She also believes that she was subject to other unfair and/or retaliatory treatment for making these claims. However, the record does not indicate that L.H. only promoted Caucasian women in the positions that J.H. sought promotion. Instead, the record indicates that while L.H. may have been involved in the interview process by being an interviewer, she played no role in selecting the appointees in any of the positions that J.H. sought. Further, the record indicates that concerning the three positions where appointments were made, two African American females were appointed and one Caucasian. Moreover, the record indicates that these appointments were based on legitimate reasons such as the other candidates scoring higher on their interviews or the human resources department determining that J.H. did not meet the experience requirements for the vacancy in question. It is noted that eligibility for permanent appointments is made through the Civil Service process, and it is this agency that ultimately determines eligibility for permanent appointment positions. Additionally, there is no requirement under Civil Service that all vacancies must be filled. Concerning the email that J.H. submits where she alleges retaliation,


while the Civil Service Commission does not make any determination as to whether the email was justified, the email states that J.H. issued unauthorized directives to her colleagues and there is nothing on its face that supports the claims that the email was sent in retaliation for her discrimination claims, her race, or any other invidious reason. However, if J.H. is disciplined, she can present those defenses as that time. Regarding L.H.'s claim that she performs out-of-title work, the appropriate forum to address these claims is a position classification review, which she has submitted. Also, it is noted that there is no obligation under Civil Service law or rules for an appointing authority to grant a lateral transfer request and the mere denial of such request, without more, is not evidence of discrimination. Additionally, while J.H. states that one form of retaliation is that she has not received a performance evaluation, while, if true, is not appropriate, she claims that this is an "across the board" issue, which does not support her claim that she has been subjected to adverse treatment based on her race or retaliation. In other words, J.H. has not presented any evidence, such as a confirming witness statement or other documentary evidence that demonstrates that any promotions were denied to her based on her race or that she was subjected to any other adverse retaliatory treatment in her work environment due to a violation of the State Policy. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

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 18TH DAY OF DECEMBER, 2024



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