



STATE OF NEW JERSEY

In the Matter of L.R.,
Department of Human Services

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

CSC Docket No. 2024-530

Discrimination Appeal

ISSUED: July 24, 2024 (SLK)

L.R., a Manager 3, Human Resources (Manager 3) with the Department of Human Services (DHS), appeals the determination of a Deputy Commissioner, 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).¹

By way of background, L.R., a 66-year-old African American female, alleged that D.M., a Caucasian female Assistant Commissioner, and V.B., a Caucasian female Assistant Division Director, and the DHS discriminated against her based on race, age, and gender because they did not process her request for a salary adjustment for the time period of January 6, 2020 to March 12, 2021, when she was a Manager 1, Human Resources (Manager 1) allegedly performing Manager 2, Human Resources (Manager 2) duties. The investigation revealed that D.M. denied the allegations stating such requests were not made for out-of-title work and not because of L.R.'s race, gender or age. Further, D.M. indicated that L.R. had been temporarily reassigned to the Vineland Developmental Center (VDC) due to staffing needs, and L.R. was performing Manager 1 duties because her supervisor, M.W., a Manager 3 who retired effective May 31, 2022, was making all high-level human resources

¹ Personnel records indicate that L.R. was provisionally appointed as a Manager 2, effective March 13, 2021, and received a regular appointment to the title on May 13, 2021. Effective June 29, 2024, L.R. was appointed provisionally as a Manager 3.

decisions, and L.R. was not in an “acting”² capacity which is reserved for Assistant Commissioner/Director level positions on a limited basis. V.B. denied the allegations stating that at that time, L.R. was in a division that was not in her jurisdiction, and her request would have gone to M.W. and not her. Additionally, L.R. alleged that DHS discriminated against her as she was the oldest African American female Manager 1, and she was not paid an equal salary in 2020 and 2015 to 2016 when L.R. claimed that she was working as a Manager 2. L.R. did not specify a specific person for this allegation. However, the investigation revealed that between June 2015 to December 2016, L.R. was reassigned to the New Lisbon Developmental Center (NLDC) where she was not in an “acting” position. The investigation stated that according to “CSC rules,”³ the DHS does not approve salary adjustments for working out-of-title. Also, as previously stated, in 2020, L.R. was performing Manager 1 duties. Further, D.M. denied discriminating against L.R. based on age as she did not know her age, and she denied discriminating against L.R. based on gender as she noted that there were at least two other Manager 1s performing Manager 2 duties for almost a year who did not receive salary adjustments because such requests were not made for out-of-title work. Therefore, the investigation was unable to substantiate the allegations as it found that neither race, gender nor age were factors in not making the salary adjustment requests.

On appeal, L.R. notes that D.M. states that salary adjustment requests are used for merit increases for unclassified staff, compression issues, and equalization of salaries for unclassified staff. Therefore, she asserts that this policy signifies that the DHS is willing to compensate highly paid unclassified staff, but not classified staff who perform higher-level duties. Further, she questions which Civil Service rules does DHS reference which it claims prohibits it from making salary adjustment requests for out-of-title work. L.R. believes that V.B.’s statement that she was not under her jurisdiction when she was reassigned to the VDC is not accurate. She encloses the letter which notified her that she was reassigned from her permanent home office in Quakerbridge Plaza to the VDC in February 2018, and her performance assessment review (PAR) which was signed by V.B. L.R. states that if V.B. signed her PAR, then this indicates that she was her supervisor and had jurisdiction over her. L.R. highlights that she is an African American female and contends that when she was reassigned to work at the VDC in 2020, she was the only Manager 1 working at a developmental center, which she did so for 13 and one-half months, who performed Manager 2 duties and was not paid a Manager 2 salary. She submits a letter from M.W. after she was reassigned to the VDC which confirms that she was performing the same duties as Manager 2s in other developmental centers. L.R. indicates that there is no supporting documentation that the DHS only reserves “acting” positions for Assistant Commissioner/Director level positions. Regarding the

² There is no such designation as an “acting” appointment under Civil Service rules. See *N.J.A.C. 4A:4-1.1, et seq.*

³ It is noted that salary adjustment requests are not governed by Civil Service rules. Instead, such requests are made to the Salary Adjustment Committee.

June 2015 to December 2016 period when she was reassigned to the NLDC, she replaced a younger Caucasian female Manager 2, which was another example of her performing higher out-of-title duties without compensation. She presents that her supervisor requested a salary adjustment for her, and the then Assistant Commissioner denied the request. Concerning her age, L.R. asserts that D.M. and V.B. cannot dismiss her age discrimination allegation by stating that they did not know her age as she was the oldest female Manager who was reassigned to a developmental center as a Manager 1 while all younger females in developmental centers were Manager 2s.

L.R. asserts that she has applied for and was not selected for many promotional opportunities in favor of younger Caucasian females. She presents her qualifications and submits documentation to support her statement. She states that C.C., a well-qualified and experienced DHS, Division of Developmental Disabilities (DDD)⁴ 57-year-old African American female Manager 2 who applied for a Manager 3 position, was not selected in favor of a candidate who did not have either DHS or DDD experience to oversee the DDD office. Therefore, she argues that the DHS discriminates based on age and race.

L.R. highlights that in 2020, S.C.⁵, a 45-year-old Caucasian male, was the only employee appointed to Manager 2 in a developmental center. She claims that during the COVID-19 pandemic, she performed the same duties as him. Additionally, L.R. questions why S.C., who had less seniority, was not reassigned to the VDC when she declined before her involuntary reassignment. Further, in response to D.M.'s statement that other employees worked out-of-title without compensation, L.R. indicates that she is only responsible for her own situation.

L.R. contends that V.B. cannot diminish her involvement by claiming that, while she worked for the DDD and was assigned to Quakerbridge, she did not have jurisdiction over her as she did not do the right thing to prevent oppressive action against her. She believes that there was a misunderstanding regarding her complaint since she is not claiming that V.B. discriminated against her due to gender.

L.R. concludes that the DHS knowingly withheld equitable compensation when it involuntarily reassigned her from Quakerbridge to the VDC as a Manager 1 when it could have temporarily or on an interim basis appointed her as a Manager 2. Further, it could have received a freeze exemption approval and provisionally appointed her as Manager 2. Additionally, the fact that S.C., a younger Caucasian

⁴ Personnel records indicates that C.C. was a Manager 2 for Greystone Psychiatric Hospital, DHS, from May 2017 to July 2018. She is currently employed with the Department of Corrections as a Manager 2.

⁵ Personnel records indicate that S.C. was provisionally appointed as a Manager 2 in December 2019, regularly appointed as a Manager 2 in May 2021, and regularly appointed as a Manager 3 in June 2024.

male was promoted to Manager 2 at that time, demonstrates that it had the ability to do so, but it chose not to promote her to Manager 2 until 2021. She reiterates her allegation that the DHS abused its power by involuntarily reassigning her to the VDC. Moreover, she claims that this was not the first time that she was not fairly compensated, as between 2015 and 2017 at the NLDC, she worked out-of-title without higher compensation.

In response, the appointing authority presents that the investigator conducted three interviews and reviewed 19 relevant documents. It states that D.M. denied the allegations as she does not decide who gets salary adjustments as her role is to process them. D.M. described the process for salary adjustment requests which first must get approval from the Assistant Commissioner/Division Director and then work its way up through the central office with final approval by the Governor's Office and then submitted to the "Civil Service Commission" for final approval. D.M. indicated that salary adjustments were used only for unclassified and executive staff as well as compression issues. Further, D.M. provided that both she and M.W. agreed that a salary adjustment could not be used for out-of-title work per "CSC guidelines" and the DHS policy, and therefore, the request was not forwarded. Further, L.R. was not working in an "acting" capacity. Additionally, D.M. indicated that since L.R. was working under M.W., a Manager 3, she believed that L.R. was performing appropriate Manager 1 duties. Moreover, D.M. submitted documentation that demonstrated that it was the DHS policy since 2001 not to process salary adjustment requests for out-of-title work, and she submitted an October 1998 document which provided that salary adjustment requests were for individuals serving in "acting or higher capacity." Concerning L.R.'s reassignment to the VDC, V.B. denied that she had any input in this decision. Regarding L.R.'s reassignment to the NLDC from June 2015 to December 2016, she did not receive a salary adjustment as she was not "acting" in a position, and the DHS does not approve salary adjustment requests for out-of-title work. Similarly, in 2020, when L.R. was reassigned to the VDC, her request for a salary adjustment was not forwarded since she was not serving in an "acting" capacity, and the DHS does not submit such requests for out-of-title work. Further, M.W. was responsible for all the high-level human resources decisions. Therefore, the investigation found that race was not a factor in L.R.'s salary adjustment request not being submitted. Moreover, concerning age discrimination, D.M. denied knowing L.R.'s age, and V.B. stated that L.R. was not under her jurisdiction at that time. Additionally, as previously stated, L.R.'s requests for salary adjustments in 2020 and 2015 to 2016 were not submitted because it was the practice not to submit such requests for out-of-title work, and age was not a factor. The appointing authority provides that L.R. could not give an example of younger employees paid for out-of-title work. Moreover, referencing gender discrimination, D.M. stated that she, along with S.C. and D.B.⁶, were Manager 1s who performed Manager 2 duties for almost a year who did not receive salary adjustments because they were performing out-of-title work. Further, V.B. claimed that she did not have jurisdiction over L.R. It notes

⁶ D.B. is not identified by a full name in the record.

that S.C. was not paid for out-of-title work as a Manager 1 until he was promoted to Manager 2. Therefore, the investigation found that gender did not play a role in L.R.'s salary adjustment request not being forwarded. Moreover, D.M. provided several high-level employees who did not receive compensation for out-of-title work, and there are many more examples of employees who perform out-of-title work without additional compensation.

Regarding L.R.'s claim that she was not offered positions that were afforded to other employees of various races, gender, and ages, the appointing authority states that L.R. has not presented any evidence that these employees were offered positions for reasons other than legitimate business reasons, such as their qualifications and interview performance. Further, this claim is not relevant to her out-of-title work claim. It also notes that regardless of whether V.B. had jurisdiction over L.R., there is nothing in the record that indicates that V.B. did not proceed with L.R.'s salary adjustment request due to her race, gender or age as M.W. was her supervisor at the time of the request.

In reply, L.R. states that in her original complaint, she provided a list of DHS employees who received salary adjustments.⁷ She highlights T.W.-C.⁸, a Temporary Special Services, Direct Care AFSCME for Greystone Psychiatric Hospital,⁹ who was not an unclassified or executive staff or eligible for a compression adjustment but received a salary adjustment.

L.R. presents that while working in Quakerbridge, she was informed that there were human resources personnel moving from the Hamilton office into the Quakerbridge office. Thereafter, V.B. provided the new seating chart. L.R. states that only the African American employees had to move their seating within Quakerbridge and all the existing African American staff were assigned to her team. She questions why this was done when there were two other incoming supervisors who could have just as easily supervised them. Additionally, she requested a professional door nameplate which was the same as the other managers and staff. However, she was relegated to a handmade, paper door nameplate, and she questions why, as the only African American manager, did she not have a professionally made door nameplate. L.R. also states that her new office was not furnished professionally as her old office where she went from having a dark wooden desk and other professional furniture, and her newly assigned office had a smaller, adolescent workstation made of plastic and particle board, mismatching furniture, and no conference table to meet with employees. She notes that her new office had previously

⁷ L.R., who serves in a human resources title, submits documentation that would appear to be compiled from information that was generally not public records and only accessible to her based on her human resources position.

⁸ Personnel records indicate that T.W.-C. was employed from June 2017 to December 2017 as an hourly employee, and she received a Salary Adjustment Committee approval on July 8, 2017 to match salary with other employees in the same title.

⁹ Greystone Psychiatric Hospital is now part of the Department of Health.

been assigned to S.C., and her new office had furniture that was not the equal of a new incoming Manager 1, who was authorized to bring her superior furniture from the Hamilton office. L.R. asserts that she asked a Manager 3 if her furniture from her old office could be moved to her new office, and she was told that her old furniture belonged to the landlord and not the DHS so it could not be moved. She questions why then several months later a younger Caucasian Manager 1 made the same request, which was approved.

Concerning the comment that she allegedly performed Manager 2 duties while serving as a Manager 1 at VDC, L.R. presents a letter from M.W. who confirmed that L.R. performed the same duties as Manager 2s who worked at other developmental centers and reported to M.W. She reiterates that she declined to be reassigned to the VDC when she was not offered the Manager 2 title, but she was involuntarily reassigned to the VDC, and she notes that she replaced a male Manager 2 performing the same duties. Further, she claims that the VDC had other options to fill the vacancy, such as reassigning a Manager 2, reassigning a less experienced Manager 1, using an interim or temporary appointment, or delaying the appointment until a freeze exemption package had been approved to backfill the Manager 2 position. However, it instead chose to exercise its power and authority over her to involuntarily reassign her.

Regarding the DHS policy of not submitting salary adjustment requests for out-of-title work which has been in place since 1998, L.R. asserts that this policy has not been applied consistently. She presents a 2007 salary adjustment of an Assistant Chief Executive Officer who was temporarily a Chief Executive Officer and a Manager 2 in 2010 who received a salary adjustment for performing out-of-title Manager 3 duties. She believes that there are many more exceptions to this policy.

Concerning the appointing authority's contention that the list of younger Caucasian females who received promotions instead of her that has nothing to do with her request for a salary adjustment for out-of-title work, L.R. responds that she provided this list to support her position that the DHS engages in racial and age discrimination. She states that when people of color are passed over and disregarded for promotional opportunities, it reduces diversity in leadership positions, causes talent to leave, reduces morale and productivity, and places State government at a disadvantage for recruitment purposes.

In further reply, concerning T.W.-C. receiving a salary adjustment, the appointing authority indicates that this employee was not submitted with L.R.'s complaint. It notes that T.W.-C's personnel records should be under the care of the Department of Health, which now oversees the psychiatric hospitals. However, the Department of Health indicates that it does not have her records. The appointing authority presents that it is unsure if T.W.-C. could even receive a salary adjustment due to her temporary status. However, a Department of Health human resources

manager indicated while it did not see that she got a salary adjustment, there was an \$87.92 payment for her in 2017. The appointing authority reiterates that it does not process salary adjustments for out-of-title work.

Regarding L.R.'s claim that only African American employees at Quakerbridge were asked to relocate their office space when employees from the Hamilton office moved in, the appointing authority outlines the list of employees who moved into Quakerbridge which shows the employees were of different genders and race. Further, it explains that one of the African American employees was moved because her job dealt with the public, and she was assigned the front desk. Additionally, the other African American employees were in secretarial positions, and they were moved to be closer to the employees that they supported. Therefore, the appointing authority asserts that the relocation of employees was based on legitimate business reasons and race, age, and/or gender played no role. Concerning L.R.'s statement that when she moved to Quakerbridge that she was not provided a professional nameplate, V.B. indicated that the other staff took their nameplates from their prior building. Further, L.R. or her supervisor would have made the request for a nameplate, and she acknowledged that she did not follow up on this issue. Referring to L.R.'s complaint about her office furniture, V.B. indicated that most of the offices did not have matching furniture, but there was one special ordered piece of furniture due to an ADA request, and another employee had unsafe furniture that was replaced. Additionally, L.R. admitted that the furniture at Hamilton belonged to the former landlord which is why it could not be moved.

In an additional response, L.R. states that she is alarmed that while the appointing authority describes justifications for her alleged discrimination, it does not provide any supporting documents as she has. She asserts that the appointing authority should be required to provide the investigator accurate information with supporting documentation. L.R. claims that the material facts remain the same. Specifically, she was offered to transfer to the VDC as a Manager 1, but she declined since the appointing authority did not offer to promote her to Manager 2 as the prior male incumbent. L.R. was then involuntarily transferred to the VDC as a Manager 1 to work as a Manager 2 without fair compensation for 13 months in 2020 to 2021 to perform the identical duties as the prior male incumbent as confirmed by her prior supervisor, M.W. Additionally, she was the oldest Manager 1 who was not fairly compensated as a Manager 2 for more than 18 months from 2015-2017, and she provides confirmation from a prior supervisor, B.B., a former Manager 3 who retired December 31, 2017, confirming that L.R. performed the same duties as four Manager 2s. Further, L.R. reiterates that at Quakerbridge, only the African American employees had to change their workspaces to make room for incoming staff. She claims that V.B.'s delineation of various staff moves are not relevant because her complaint is based on external staff moving to Quakerbridge displacing African American staff and not the DHS human resources staff moving out or the seating assignments prior to the new staff moving to Quakerbridge. Further, L.R. provides

that she requested a professional nameplate from V.B. so that she would not have to use a handmade paper doorplate, and she was embarrassed when she did not receive one. She questions why she, as the only African American manager, had her request ignored. Similarly, her request to move in her professional furniture was denied, so she questions why her lower ranking coworker, M.S.¹⁰, who is Caucasian, had the exact office furniture that she requested to move to Quakerbridge, while she had juvenile furniture. L.R. emphasizes that the position in the VDC was already classified as Manager 2, and her request not to be transferred there because she was not going to be paid as a Manager 2, should not have been ignored. She highlights that younger Caucasian Manager 2s could have been transferred there, but instead the appointing authority chose to remove a lower ranking African American Manager 1 to work out-of-title for less pay. L.R. restates that this is not the first time that she was required to work out-of-title for more than one year.

Regarding T.W.-C., L.R. states that while the appointing authority tries to undermine it, she was approved for a salary adjustment in July 2017 according to its payroll records. L.R. provides a list of salary adjustment approvals by the appointing authority, and she presents that a review of the list provides that an employee's status was not a barrier to receiving a salary adjustment as TES/TSS, competitive, noncompetitive, and unclassified employees received salary adjustments.

Referring to the displacement of staff at Quakerbridge, L.R. reiterates that only African American staff were asked to move to make room for incoming staff. While V.B. claims that seating assignments were based on employee strengths and reporting relationships, she questions how she could know the employee strengths when she did not previously work with them or without consulting with her. L.R. indicates that she began supervising human resources staff in April 2018 until February 2019, which is the third time she was exploited by assigning her to do the work of a Manager 2 without compensation. Moreover, L.R. questions how the appointing authority can use certain justifications for its action when the items it presents were not in existence at the time she worked at Quakerbridge. L.R. restates that she was involuntarily reassigned to the VDC, and she claims another reason she was involuntarily reassigned was so that A.K., a younger Caucasian Manager 1,¹¹ could be promoted to Manager 2 at Quakerbridge for a position where L.R. was not interviewed nor appointed. Regarding M.S.'s furniture, although she acknowledges that her furniture was old, the prior staff member assigned to the office did not complain that the furniture was unsafe, and she again highlights that M.S. received highly professional furniture when she did not.

Concerning the appointing authority's claim that only Assistant Commissioner/Director level positions were reserved for "acting" positions, L.R.

¹⁰ Personnel records indicate that M.S. was appointed as a Manager 2 in 2022. Prior to being a appointed a Manager 1 in September 2019, she had been in Personnel Assistant titles.

¹¹ Personnel records indicate that A.K. was appointed as a Manager 2 in 2019.

submits documentation to show that S.C. was listed as “acting” in his position. Further, she attaches an October 2023 email from S.C. where he indicates that his title is “HR Director;” yet there was never any posting for this position. Therefore, L.R. claims that this is another example of the appointing authority excluding minority candidates from higher-level human resources executive positions. She argues that the appointing authority continues to exclude minorities from promotional opportunities, reiterating that A.K. was promoted to Manager 2 at Quakerbridge when L.R. was not interviewed. Further, in December 2023, a promotion for Manager 3 was announced, but it was only open to a unit scope where there are no minority Manager 2s. L.R. believes that to ensure a diverse pool of qualified candidates, the position should have been open to all Manager 2s within the agency. She also presents another prior promotional examination which also excluded minority candidates for a Manager 3 due to limiting the unit scope that the position was open. She submits the appointing authority’s written circularization/posting of promotional opportunities to support her claim that such announcements contradict its policy.

L.R. argues that the appointing authority has implemented discriminatory practices that have limited her advancement, and it has not provided supporting documentation for its practices as directed by this agency. She states that the appointing authority is not entitled to free/discounted labor, and this is not the first time that the appointing authority has forced an African American female to work at a lower pay while younger, non-African Americans, or male employees were paid correctly based on the duties that they perform. She is requesting compensation for lost wages where she performed Manager 2 duties while serving as a Manager 1. Further, L.R. contends that the appointing authority be directed to stop such practices.

In another reply, the appointing authority asserts that L.R. has not provided any relevant evidence that would change the investigation’s finding that she was not subjected to discrimination. It reiterates that when L.R. was assigned to the VDC, she was primarily performing Manager 1 duties as the higher-level decisions were made by a Manager 3. Further, it presents that there is a difference between performing out-of-title duties and working in an “acting” capacity, which is reserved for higher executive functions. Additionally, as L.R. notes, many employees of various races, ages, and genders have worked out-of-title. Moreover, the appointing authority has a long-standing policy of only requesting salary adjustments for those working in an “acting” capacity.

Additionally, the appointing authority reiterates that V.B. provided legitimate business reasons why certain employees were moved when staff moved into Quakerbridge. Further, not only were African American employees moved, but employees from various races, genders, and ages were moved. Concerning L.R.’s furniture, the appointing authority states that the mere fact that a prior employee

did not complain about the furniture in M.S.'s office does not mean that there was not a safety hazard.

Regarding L.R.'s reassignment to the VDC, the appointing authority provides that if it moved another Manager 2 to the VDC as she suggests, then there would have been an opening at the location where that employee had moved, which would have created a similar problem at that employee's former location. Additionally, without more detail concerning the background of employees that L.R. suggests could have been moved to the VDC, there is not enough information to know if moving another employee made sense from a business standpoint. The appointing authority also notes that L.R. lives near the VDC so it was not a commuting hardship. Further, the appointing authority contends that it did follow one of L.R.'s suggestions by temporarily assigning her to the VDC.

Concerning L.R.'s request for a salary adjustment, the appointing authority states that L.R. provided a list of employees who received salary adjustments but provided no reasons for them. Instead, she only pointed to their titles. Additionally, L.R. highlights two employees who received salary adjustments more than 13 years prior to her request. As such, she has not presented sufficient evidence that indicates that she has been subjected to discrimination. Referring to promotional opportunities that were only open to a unit scope where there were no eligible minority employees, the appointing authority maintains that Civil Service rules determine who is eligible for a promotion, and neither the Equal Opportunity Office (EEO) nor this agency has control over who is already in the unit scope for the promotional announcement. Moreover, L.R. has provided no evidence that she was discriminated against when she was not previously chosen for a promotion, and she has provided no evidence that candidates were chosen based on their age, race, and/or gender instead of being the most qualified. The appointing authority also provides a list of employees who are of different races and genders that D.M. remembered who also did not receive salary adjustments while working out-of-title for a period when paperwork was pending on promotional actions. It argues that L.R. has not provided one scintilla of evidence to support her claims.

In a supplemental response, L.R. emphasizes that M.W. confirmed in writing that she performed the exact same duties as other Manager 2s. Additionally, she submits documentation to demonstrate that one month after she was "wrongfully" reassigned to the VDC, she requested to be promoted to Manager 2, and this documentation was used to promote her to that position over 13 months later. She contends that this is evidence that she was performing Manager 2 duties. L.R. highlights that the appointing authority's response excluded the fact that she replaced a male Manager 2. She claims that it is not accurate that the Manager 3 made all the high-level decisions as M.W.'s statement indicates that she was performing Manager 2 duties. Concerning the appointing authority's statement that only high-level executives work in an "acting" capacity, she again highlights that S.C.,

a younger Caucasian male, who is a Manager 2, was given the “acting” title. Therefore, she believes that she could have been appointed as “acting” Manager 2, and she questions the differential treatment. She believes that the list of employees that the appointing authority presents as individuals who worked out-of-title should not be considered as this list includes non-human resources professionals. Additionally, the list that M.W. provided regarding staff who moved should be excluded from review in this matter because these moves had nothing to do with Quakerbridge human resources. She contends that the staff that moved out of Quakerbridge are irrelevant as only African American employees were assigned new workstations within Quakerbridge. L.R. notes that the appointing authority’s response fails to mention that the experienced Manager 2s who could have been reassigned to VDC instead of her were all Caucasian and younger than her. She questions whether the appointing authority is inferring that it is alright to involuntarily reassign a lower ranked Manager 1 instead of a younger Caucasian manager because it is better to disrupt an African American manager than a Caucasian manager who is already performing Manager 2 duties. L.R. presents that at least three of the seven less experienced Manager 1s who had prior work experience in a developmental center or a 24-hour facility could have been reassigned to the VDC instead of her. Moreover, contrary to the appointing authority’s position, while it may have temporarily reassigned her to work as a Manager 1 at the VDC, it did not provide her a temporary appointment to Manager 2 under *N.J.A.C. 4A:4-1.7* as she suggested.

Moreover, L.R. provides another example where she claims that she was treated differently than her younger peers. She presents that in 2018, she complained about two executives where she alleged that bullied her. Thereafter, less than three weeks later, she was reassigned from her DDD human resources office and involuntarily reassigned to Quakerbridge human resources without a legitimate business reason as this left the DDD office with no manager to oversee and direct nine community services offices and five developmental centers. Further, L.R. never received any confirmation that her complaint was investigated or otherwise treated seriously, and instead she was scolded for making the accusations. She claims that this was clearly an act of retaliation, and a disingenuous email about her reassignment was sent to camouflage this retaliatory action. L.R. reiterates three different times, 2015-2017, February 2018 to January 2019, and January 2020 to March 2021, where she was denied equal pay as younger Caucasian colleagues. She restates her request for lost wages and for the appointing authority to be directed to stop these practices.

In response to the supplemental submission, the appointing authority notes that L.R. made complaints due to bullying and not discrimination. Therefore, her claim of retaliation does not fall under the State Policy, and the current matter was filed more than four years after the bullying complaints. Additionally, M.W.’s letter does not prove that L.R. performed Manager 2 duties as her letter states that she

performed the same duties as the other four managers at other developmental centers, but it does not state that she performed Manager 2 duties. Further, D.M., M.W.'s supervisor, indicated that L.R. was not performing Manager 2 duties because M.W. made the high-level decisions. Similarly, L.R. was never serving in an "acting" capacity, and it was policy based on "Civil Service guidelines" that only "acting" employees would receive salary adjustments and not those working out-of-title. Moreover, even if S.C. was identified as serving in an "acting" capacity, L.R. did not allege that he received a salary adjustment while working in that capacity. The appointing authority emphasizes that the issue in this matter is not whether L.R. should have received a salary adjustment, as this is an issue for human resources and the "Civil Service Commission" (Commission), but whether L.R. was discriminated against based on her membership in a protected class, which she was not. Finally, the appointing authority disagrees with L.R.'s assertion that the movement of various employees in and out of Quakerbridge have no bearing on the argument that only African American employees were displaced, as V.B. provided legitimate business reasons for all the employee movement. L.R. was also advised that when she was reassigned to the VDC, it was done to maintain operational effectiveness, which is a legitimate business reason.

In reply, L.R. contends that collectively the issues that she presents demonstrate that she has been treated differently than her younger Caucasian peers. Further, she asserts that the appointing authority's alleged improper and bias actions cannot be dismissed because they do not fall under the EEO's purview. L.R. states that she was reassigned to the VDC as a Manager 1 during the peak of the COVID-19 pandemic. She argues that it is absurd to state that she performed less work or had less responsibility than her peers as she worked in a developmental center while the virus was highly contagious and her work involved dealing with new regulations, guidelines, and mandates. L.R. indicates that while other State departments compensated human resources staff for the increased responsibilities and time during this period, she was not compensated for this extra work and responsibility. She asserts that the appointing authority could have requested a "Special Rate" of pay as other State departments did. L.R. lists other employees who worked in developmental centers that she believes performed the same duties during this time but were in the Manager 2 title. She clarifies that she did not say that she was appointed as "acting." Instead, her argument is that she should have been appointed as "acting" and been compensated as such. L.R. restates her questioning as to why S.C. was deemed "acting" when she was not. Concerning the appointing authority's statements that her reassignment to the VDC was temporary, then she questions why she was not reassigned back to Quakerbridge as she was never offered the opportunity to be reassigned back. L.R. reiterates that regardless of V.B.'s explanation, only African American employees moved their workstations in Quakerbridge. Moreover, the reason why she was not offered the opportunity to be reassigned to Quakerbridge was because the appointing authority appointed A.K., a younger Caucasian employee, to be a Manager 2 there. She claims that A.K.'s

appointment must have been facilitated through “back door tactics” as there was no posting for this position.

In further response, the appointing authority indicates that there are legitimate business reasons why L.R. has not been reassigned back to Quakerbridge. Specifically, the investigation revealed that the initial plan was for L.R.’s reassignment to Quakerbridge to be temporary pending an investigation of another employee who was expected to return. However, after the investigation into the other employee was resolved, the other employee retired. Additionally, L.R. was promoted to Manager 2 in March 2021, and due to operational needs, her assignment continues at the VDC.

In L.R.’s final reply, she summarizes her argument that the appointing authority treated her unfairly and differently than her peers without providing a satisfactory reason while she believes that she documented multiple incidents of discriminatory behavior.

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

In this matter, L.R. alleged that in January 2020, she was temporarily reassigned to the VDC against her wishes when there were younger Caucasian employees who could have been reassigned instead of her. Further, she asserted that she was assigned Manager 2 duties while only being compensated as a Manager 1 until she was promoted to Manager 2, effective March 13, 2021. Additionally, she claimed that there were two prior occasions, in 2015 to 2016 and 2017, where she also performed higher level out-of-title duties without compensation. Moreover, L.R. alleged that she was not previously promoted in favor of younger Caucasians. L.R. also made allegations related to her seat assignment, nameplate, and furniture while working in Quakerbridge before her reassignment to the VDC, and she had previously been reassigned to Quakerbridge from her position with the DDD in

retaliation for a bullying complaint she made against executives. On appeal, L.R. maintains that these allegations, taken collectively, demonstrate that she, as an older African American female human resources manager, was treated differently than younger Caucasian peers based on her race, gender, and/or age.

Specifically, regarding L.R.'s temporary reassignment to the VDC, she indicates that she did not want the reassignment because the appointing authority was not willing to compensate her as a Manager 2, which was the title of the employee who had previously held the position that was being filled. She provides that the appointing authority had alternatives such as reassigning a less experienced Caucasian Manager 1 or an existing Caucasian Manager 2, appointing her to Manager 2 on a provisional, interim or temporary basis, or delay filling the open position until it received approval to appoint a Manager 2. However, it reassigned her, and she performed higher-level duties without compensation. In response, the appointing authority indicates that it temporarily reassigned L.R. to the VDC due to its operational needs. It notes that if it reassigned another Manager 2, then this would have created an opening at the developmental center that the Manager 2 vacated. Further, the appointing authority highlights that L.R. lived near the VDC so her commute was not a hardship. Upon its review, the Commission finds that the appointing authority has presented a legitimate business reason as to why L.R. was chosen for the temporary reassignment to the VDC, and the mere fact that other employees potentially could have also been qualified for the reassignment, without more, is not evidence that race, gender, and/or age factored into its decision. L.R. has not presented persuasive evidence in that regard.

Additionally, with respect to L.R.'s allegation that she was discriminated against when D.M. did not seek a salary adjustment, the appointing authority explained that it was its policy not to ask for a salary adjustment for out-of-title work and because the "CSC rules" prohibit it. Instead, it only sought salary adjustments for unclassified and executive staff due to compression issues or when the higher-level staff was serving in an "acting" capacity. It is noted that other than the isolated incidents that L.R. presents, one which involved an \$87.92 payment and two others which were at least 13 years old, neither the investigation nor L.R. has provided sufficient evidence to support that the appointing authority requested salary adjustments for employees in similar positions as L.R. Moreover, D.M. disputed that L.R. was performing higher-level duties as there was a Manager 3 who made the high-level human resources decisions. It is emphasized that salary adjustment requests are made to the Salary Adjustment Committee, and the Commission expresses no opinion as to whether such a request would be approved. Regardless, there is nothing in the record that suggests that D.M.'s refusal to submit a salary adjustment request on behalf of L.R. was based on L.R.'s membership in a protected class. Instead, the record indicates that D.M. did not submit the request based on her understanding of DHS' policy and what situations are approved for salary adjustments. Moreover, if L.R. believed that she was working out-of-title, she could

have requested a position classification review as it is only this agency that decides position classification. However, there is nothing in the record that indicates that she did so. Similarly, the record indicates that the appointing authority did not submit salary adjustment requests for L.R. for alleged prior out-of-title work because it was against its policy and not because of L.R.'s membership in a protected class.

Concerning L.R.'s allegation that she was not previously promoted in favor of younger Caucasians, the mere fact that the appellant is older and a different race than employees who received promotions is not evidence, without more, that any promotional decisions were not based on legitimate business reasons. Further, regarding L.R.'s belief that the appointing authority should have announced prior promotional examinations open to unit scopes beyond the ones announced since there were no minority candidates eligible for those promotions, a unit scope is the organizational unit where the position for the title being announced exists and employees have promotional rights in the unit scope where they are permanently located. *See e.g., In the Matter of Stephen Pieczynski* (MSB, decided March 21, 2000). Moreover, under Civil Service law and rules, there is no requirement that a promotional announcement be opened to unit scopes beyond the unit scope where the position exists. Instead, an appointing authority has a choice of the announced unit scope since it is in its discretion to determine its organizational needs. *See In the Matter of Jacques O. Lebel* (MSB, decided May 7, 2003). In this case, there is insufficient evidence to support a violation of the State Policy in that regard.

Regarding L.R.'s allegation concerning seat assignments, her nameplate, and her furniture while working in Quakerbridge, the investigation revealed that relocated seat assignments were based on operational needs, such as having a person whose position involved interacting with the public moving to the front desk and having secretaries moving closer to the employees that they supported. Additionally, staff who moved into Quakerbridge brought their nameplates with them, and L.R. acknowledged that she did not follow up on her request for a more professional looking nameplate. Further, L.R. could not bring her furniture from her prior building as the landlord for that building owned the furniture, and Quakerbridge did not have matching furniture for all employees. Additionally, the employee who received new furniture made a request for new furniture, which was approved based on safety concerns, and there is nothing in the record that indicates that L.R. similarly complained or that there was any evidence that her furniture was unsafe. Accordingly, there is nothing in the record that indicates that any of the employee movements, receipt of nameplates, and furniture assignments in Quakerbridge were based on one's membership in a protected class. Referring to L.R.'s assertion that her reassignment to Quakerbridge was made in retaliation for a bullying complaint that she made, the Commission does not have jurisdiction over this allegation.¹²

¹² Based upon the appointing authority's determination letter, there is no indication that L.R. initially alleged that she was retaliated against for a bullying complaint. Further, retaliation under the State Policy is defined as retaliation for having alleged being a victim of discrimination/harassment,

Finally, L.R. alleges that the above-mentioned issues collectively demonstrate that she was treated differently than younger Caucasian peers. However, despite L.R.'s voluminous submissions, she has not presented confirming evidence that indicates that any decision was made based on one's membership in a protected class. 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, L.R. describes a series of events in which she disagrees with management's decisions. However, mere disagreements 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, L.R. has not met her 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 24TH DAY OF JULY, 2024



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

providing information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposing a discriminatory practice. *See N.J.A.C. 4A:7-3.1(h).*

c: L.R.
Pamela Conner
Records Center
Division of EEO/Affirmative Action