



STATE OF NEW JERSEY

In the Matter of D.C., Department of
the Corrections

CSC Docket No. 2024-2272

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

Discrimination Appeal

ISSUED: September 25, 2024 (SLK)

D.C., a Senior Investigator Parole and Secured Facilities with the Department of Corrections (DOC), appeals the determination of a Director, Equal Employment Division and Ethics Unit (EED), 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, D.C., a Caucasian male, alleged that he was not selected to the DOC’s Diversity, Equity, and Inclusion (DEI) Council (Council) due to a conflict with his religious beliefs. In response, the appointing authority presents that D.C. believed that he was not selected to the Council because, in response to a question on the application, he indicated that he did not participate in prior Council events because the “[p]ageantry conflicts with my religious beliefs.” However, M.H., an African American female Assistant Commissioner, provided that “[s]elections for the Council were based on the responses to the questions on the application which were reviewed by a number of reviewers. Individuals who demonstrated a genuine interest in the work of the Council were considered.” The appointing authority presents that the application asked three open-ended questions and allowed applicants to respond with up to 100 words for each question. A review of D.C.’s application revealed that his answers ranged from four to 12 words, and limited information was provided. Therefore, the appointing authority concluded that D.C.’s non-selection was most likely because other applicants demonstrated more interest and not his religious

beliefs. Consequently, the EED determined that D.C. had not met his burden of proof that he had been subjected to a violation of the State Policy.

On appeal, D.C. asserts that there was a conflict of interest in reviewing his allegation since the EED and M.H. were both on the Council. Further, he presents that the EED informed him that it would not be opening an investigation in the matter because the EED perceived, based on an email from M.H. that was part of a larger email chain, that D.C. was not selected to the Council because he had a lack of interest due to the limited number of words on his application. However, D.C. indicates that M.H. had previously informed him in an email that he was not selected to be on the Council based on a multitude of factors and there was nothing lacking in his application. Further, when M.H. was questioned as to what the multitude of factors were in making selections, she responded that his application was the sole factor. Additionally, while D.C. notes that he was not informed as to whether the EED reviewed his application, he thinks that there is a high probability the EED did review his application. Moreover, D.C. claims that it was egregious for the EED to rely on alleged false statements from M.H. because he contends that there were contradictory reasons presented as to why he was rejected from the Council. Also, D.C. questions why the EED decided what M.H. believed without an investigation since he asserts that the EED could not determine M.H.'s intention without investigation. He requests a formal investigation into his claims that is performed by someone not on the Council or under M.H.'s direct supervision.

Additionally, D.C. submits an email exchange from C.W., an African American female Government Representative 2. D.C. states that the email exchange subjected him to allegations that his speaking against what he sees as discriminatory treatment as somehow not being aligned with DOC policies and values. He asserts that the email exchange did not address his concerns and he was reminded that the tone, frequency, and nature of his correspondence had been less than positive. Further, D.C. provides that he was encouraged to explore resources related to DEI, and he believes that such a statement is an attack on his education level in violation of DOC policy. He argues that the Office of Diversity and Legal Affairs conduct towards him has created a hostile work environment as he fears that action will be taken against him because he objects to the practices of the Office of Diversity and Legal Affairs and the Council. Concerning M.H.'s and C.W.'s statement that he was unwilling to attend a meeting to discuss his objections, he believes that this is a gross misinterpretation as he only suggested that his union representative be present because a meeting with executive staff following his email was unprecedented. D.C. feels that M.H.'s and C.W.'s clear intention was to intimidate him as they would not have rescinded their offer to meet with him after he included his advocate. As a remedy, he outlines the conduct that he believes that the DOC and the Office of Diversity and Legal Affairs should immediately cease.

In response, the appointing authority presents that in response to D.C.'s new allegation, the EED reviewed additional information pertaining to the decision-making process for Council seat selections. It provides that M.H. indicated that the selections to the Council were based on the responses to the questions on the application which were reviewed by a number of reviewers, and individuals who demonstrated a genuine interest in the Council were considered. The EED states that it reviewed D.C.'s application and it determined that his answers provided limited information as to why he wanted to join the Council. Therefore, it concluded that it was more likely than not that the opinion of the panel was that D.C. was less interested than other candidates and he was rejected based on his level of interest and not his religious beliefs.

Further, in response to this agency's direction regarding the subject allegation, the EED spoke with M.H. who advised that a panel of reviewers reviewed 50 applications for the Council seats in a blind selection process. Each applicant was assigned a number in lieu of a name, and applications were reviewed by the panel only using the assigned number. Additionally, M.H. advised that panel members were asked to review two questions on an application. Specifically, regarding D.C.'s application, the panel reviewed his responses as follows:

“Q: Why do you want to be a part of the Diversity, Equity and Inclusion Council” (In 100 words or less).

A. I want to learn about how ‘equity’ serves our Department better than equality.

Q: What qualities will you bring to the Council?

A: Honesty, Integrity and Objectivity.”

The appointing authority states that other applications included greater detail as to why the applicant desired to be selected as a member of the Council such as how the applicant could promote the goals of the Council, expanding the qualities that they possessed which would enhance the mission of the Council, and demonstrating genuine enthusiasm in participating in the work of the Council.

The appointing authority notes that D.C. contended that he was not selected because he wrote on his application:

“Q: What DEI Council events have you attended or participated in?

A. None. Pageantry is in conflict with my religious beliefs.”

The appointing authority emphasizes that this question and answer were not considered or viewed by the panel. Therefore, the panel was unaware of D.C.'s statement concerning his religious beliefs and it was not possible that the panel discriminated against him on the basis of religion or his religious beliefs. The appointing authority notes that the email that informed D.C. that he was not selected and stated that there was nothing wrong with his application but that a selection was based on a multitude of factors was the same email sent to all candidates not selected.

The appointing authority describes that the Council's mission is to develop a diverse, inclusive environment through listening and learning, and the work aligns with the Governor's Executive Order, which established an Office of Equity, Inclusion, and Belonging. It argues that D.C. has not met his burden of proof that he has been subjected to a State Policy.

In reply, D.C. reiterates his contention that M.H. provided a false statement. Therefore, he asserts that it is alarming that the appointing authority relies on her statement and has taken no further steps to verify if anything she says is true. D.C. asks if any of the records mentioned are maintained, were they viewed in response to his appeal to even verify that they exist and was anyone spoken to in order to verify M.H.'s statements. Further, D.C. states that he finds it incredibly convenient that his response to the question, "What DEI Council events have you attended or participated in?" which was the first question, was not considered, and he believes that this suggests that the entire process was flawed. Additionally, D.C. highlights that the DOC states on social media that people from all backgrounds and creeds are welcome, which he claims is confusing given that a perceived unwillingness to perform Council duties was a determining factor in selecting Council members. D.C. argues that determining Council members based on only those who wished to do work on the Council is a direct violation of the Governor's policy and M.H.'s statements in a video where she discusses the diversity of opinion. D.C. contends that while he has continued to engage the Council to provide a diverse opinion and make objections based on his membership in a protected class, he receives little feedback. Moreover, he asserts that his engagement demonstrates his willingness to do Council work.

D.C. asserts that the Council's core value, namely equity over treating people equally, is sufficient evidence of discrimination. For example, he highlights that the State is an equal opportunity employer and not an equitable opportunity employer. He presents that he inquired as to why there was no email regarding the observance of Easter. In reply, he was advised that the DOC suspended that practice prior to the 2023 Winter Holiday Season; yet the DOC sent an email regarding the observance of the Chinese Lunar New Year in early 2024. D.C. contends that the DOC has no right to be arbitrary, especially since its statement was untrue. He states that the DOC continues to promote social/political/cultural material that some may find objectionable based on their cultural or religious beliefs. D.C. presents that the DOC has failed to acknowledge holidays of cultural and religious significance to him such

as Columbus Day, citing its cultural significance to defeating stereotypes of Italian Americans.

D.C. states that there are many unanswered questions such as identifying which other factors were used in addition to the application to make the selections. Further, he questions why M.H. is not being held accountable for her alleged lie. He asks if there was a scoring rubric and how many positions were available. D.C. questions how the Council can ensure that its new members are diverse if there is a blind selection process, and he wonders what type of diversity it is looking for. D.C. asks how does the Council choose which protected classes get full-day sponsored events and which get a virtual lunch event. D.C. argues that the appointing authority's failure to take into account these factors shows that it has no interest in actually finding out if the Office of Diversity and Legal Affairs is engaging in discriminatory practices. He believes that there is sufficient evidence to demonstrate both faith-based discriminatory practices as well as discrimination based on creed.

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, D.C. alleges that he was not selected to be on the Council due to his religious beliefs. The record reveals that the mission of the Council is to develop a diverse, inclusive environment through listening and learning, and the work aligns with the Governor's Executive Order 265, which established an Office of Equity, Inclusion, and Belonging to increase the presence of historically underrepresented groups in government, foster greater inclusions and belonging, particularly for historically marginalized and underserved groups, and other goals in order to achieve a more equitable, stronger, and fairer New Jersey. A review of D.C.'s application indicates that when he was asked why he wanted to be on the Council he responded:

I want to learn about how 'equity' serves our Department better than equality.

In other words, D.C.'s response does not indicate how he would promote the mission of the Council or that he would enthusiastically work to promote the mission of the Council. This response neither implicates D.C.'s religion or religious beliefs, nor clearly presents him as someone who would work towards the goals of the Council. Not selecting a candidate to be on a council, committee or panel who does not clearly express belief or enthusiasm in the mission of that entity is a legitimate business reason and not a violation of the State Policy.

Concerning D.C.'s belief that he was not selected because in a response to a question asking whether he previously attended Council events, he responded:

None. Pageantry is in conflict with my religious beliefs.

The record indicates that the reviewers did not review D.C.'s response to this question; and therefore, they could not have discriminated against him based on his religious beliefs. Regardless, even if they had, as D.C. believes, not selected someone who states that the mission of the Council conflicts with that individual's religious beliefs is not, *per se*, a violation of the State Policy unless the non-selection is based on that individual's membership in that religion or their religious beliefs. No persuasive evidence in that regard has been presented in this matter, and rather, the preponderance of the evidence shows that it was, instead, D.C.'s apparent non-belief in the goals and mission and presumed lack of willingness to work towards those goals and mission of the Council that led to his non-selection.

Regarding D.C.'s belief that the Council and its practices are discriminatory, while he is entitled to his beliefs, the goal of the State's DEI efforts, which includes the efforts such as those that the Council is making, is to uplift marginalized and underserved groups, which is consistent and not antithetical to the purpose of the State Policy. Concerning C.W.'s email exchange which he felt was an attack against him and hostile, disagreements between co-workers cannot, in and of themselves, 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). Further, the email itself does not appear to be discriminatory against the appellant based on his membership in any protected category.

Referring to M.H.'s alleged "lie" because her email to him concerning his non-selection to the Council said that there was nothing wrong with his application and there was a multitude of factors in selecting the Council members when his application was the sole factor in his non-selection, the record indicates that the email that D.C. received was the same that was sent to every non-selected candidate. Therefore, the email wording was general enough for a group audience, which is a legitimate business practice, and does not indicate a "lie," contradiction, or any other reason to question the credibility of M.H. Moreover, a plain review of D.C.'s

application suggested his lack of belief and desire to promote the goals of the Council's mission, which D.C. has only confirmed on appeal.

Referring to D.C.'s claim that the EED and M.H. had a conflict of interest in investigating his allegations because they were on the Council, as stated above, regardless as to who performed the investigation, D.C.'s application did not clearly indicate a belief and a desire to promote the mission of the Council, which is a legitimate business reason for his non-selection. Moreover, although D.C. requests a further investigation in this matter, he has not presented any witnesses, documents, or other evidence which could potentially change the finding that he lacked belief and enthusiasm for the Council's mission, which he confirms on appeal, and that his non-selection was based on some other non-legitimate reason.

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 25TH DAY OF SEPTEMBER, 2024



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