



STATE OF NEW JERSEY

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

In the Matter of B.C.,
Motor Vehicle Commission

CSC Docket No. 2024-1722

Discrimination Appeal

ISSUED: February 26, 2025 (EG)

B.C., a Personnel Assistant ¹ with the Motor Vehicle Commission (MVC), appeals the determination of the Director of the Division of Equal Employment Opportunity/Affirmative Action (EEO/AA) at the Civil Service Commission (CSC), stating that it substantiated in part the appellant's allegations that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a black female, filed a complaint dated September 26, 2023, alleging D.F., Assistant Commissioner² MVC, discriminated against her based on disability, race, and sex/gender. Specifically, she alleged that D.F. stated that the appellant was "too hard" to be a supervisor, and that this was used as a stereotype against black women. She added that D.F. promoted black men but was reluctant to promote black women. Additionally, the appellant alleged that D.F. intimidated the 2018 Personnel Assistant 3 interview panel to change her scores due to her race so another applicant would appear to have a higher score. Further, the appellant contended that she did not receive overtime compensation for the extra Covid-19 work she did and that she performed supervisory work without being in a supervisory title. Moreover, the appellant alleged that Personnel Assistant 2, M.M., got promoted when a supervisor "ran to" D.F. after M.M. threatened to leave. Furthermore, the appellant

¹ The appellant was serving as a Personal Assistant 2 when the complaint was filed. She was promoted to Personnel Assistant 1, effective July 13, 2024.

² At the time the complaint was filed, D.F. was serving as an Assistant Administrator at MVC.

alleged retaliation during the investigation stating that her promotion to Personnel Assistant 1 had not been posted while another less qualified employee's promotion was posted. The appellant also alleged that she had seen the Leave Management Unit's organizational chart, which indicated a Personnel Assistant 1 position in grey, which she believed meant the position was being held for a specific individual. Finally, the appellant alleged that D.F. said, "she is concerned with promoting you to the Personnel Assistant 1 position because you may get overwhelmed and take a leave of absence again."

Pursuant to *N.J.A.C.* 4A:7-3.2(e), if reporting a complaint within a complainant's own agency presents a conflict of interest, the complaint may be filed directly with the Division of EEO/AA at the CSC. To ensure a thorough and impartial investigation into the appellant's allegations, the Division of EEO/AA at the CSC assumed jurisdiction in this matter. The Division of EEO/AA conducted an investigation and found that the appellant's allegations were substantiated in part. The investigation included interviews and the collection and review of pertinent documents. Specifically, the investigation found no corroboration by witnesses or evidence that D.F. said the appellant was "too hard" to be a supervisor. It also found that during D.F.'s tenure at MVC there had been 15 promotions of black women. With regard to D.F. intimidating the interview panel, the investigation found that during her interview with EEO/AA staff, the appellant indicated that D.F. intimidated the panel to change the scores because she had a personal relationship outside of work with the other applicant. The investigation determined that there was no nexus between this allegation and a protected class but did refer the matter to the appropriate office for further review. Further, the investigation found that MVC employees started receiving overtime for Covid-19 related work in April 2021, and the appellant started receiving overtime compensation on April 9, 2021, and ending on October 8, 2021. It also concluded that the appellant was a lead worker in her unit, and thus, she could disburse work to the unit and lead when the supervisor and/or manager was absent. Moreover, the investigation could not substantiate the appellant's allegations about M.M.'s promotion.

Furthermore, the investigation could not substantiate the appellant's allegations about the Personnel Assistant 1 positions that were raised. It found that the Leave Management Unit only had one Personnel Assistant 1 position approved by the Governor's Office and the CSC, which had been filled in May 2023. The MVC's Human Resources Office had filed a critical need with the Governor's Office for a Personnel Management 1 in the Leave Management Unit in November 2023 but as of January 2024, it had not received approval for this position. Finally, the investigation did substantiate that D.F. had stated that she was concerned about promoting the appellant because she could get overwhelmed and go out on leave again. The statement was corroborated by a witness. Consequently, the Division of EEO/AA indicated that the substantiated allegation would be handled administratively.

On appeal, the appellant argues that the Division of EEO/AA failed to thoroughly, effectively and holistically investigate this matter. She contends that it failed to provide her with a sufficient interview, neglected key witness information, severely misconstrued her statements and falsely presented information. Additionally, she states that she was only given the option to interview online via Microsoft Teams, while she witnessed the investigators visit the Executive floor at the MVC in November 2023. She asserts that because she was not offered the opportunity to interview in person, as other witnesses were, she could not physically review the Division of EEO/AA's documented statements of her interview. In this regard, the appellant alleges that information from her statements were altered and resulted in incorrect information in the determination letter. Additionally, she asserts that the Division of EEO/AA ignored two of her witnesses who told her that D.F. had told them that the appellant was too hard to be a supervisor. The appellant also argues that the determination mischaracterized her allegation that D.F. did not promote black women by including her tenure as Deputy Administrator of Human Capital Services which encompassed three divisions. The appellant explains that her allegation concerns when D.F. was the Director of Human Services and only promoted a handful of black women while serving in this position. Further, the appellant contends that while she did indicate that the scores were changed in favor of an acquaintance of D.F., she also alleged that it was racially motivated. She requests that this allegation be fully investigated as a racial bias. With regard to the overtime payments, the appellant argues that the investigation did not address the lack of payment from March 2020 to April 2021 and for no payments after October 2021. The appellant also challenges the determination that she could perform the duties of a lead worker despite her not having been a Personnel Assistant 2 the entire time and the fact that there was always a supervisor or manager present. Moreover, she argues that she provided information on more than one person being promoted when threatening to leave, not just one person as indicated by the determination letter.

Furthermore, the appellant argues that she had an in-person meeting on October 13, 2023, to discuss her upcoming promotion. After she filed her complaint, she noticed that her position had not posted and found out that her position had not "made the cut" for critical needs. She indicates that the timing of her position not making the cut appeared like retaliation. She further argues that the Division of EEO/AA misrepresented what she had said about the organizational chart and grey position in the determination letter. The appellant claims that the position on the organizational chart was proof of retaliation as there was a position available or planned but it was not for her. Finally, the appellant presents that the Division of EEO/AA did not address her disability in finding that D.F. had made a comment about the appellant possibly becoming overwhelmed and taking leave if promoted. The appellant submitted numerous documents including memoranda of organizational changes, a 2018 position classification questionnaire, emails, a MVC Covid-19 press release, and performance assessment reviews (PAR).

In response, the Division of EEO/AA asserts that the appellant was offered the opportunity to interview in person at the CSC or via Microsoft Teams. She chose via Teams. The appellant was not offered a meeting at the MVC in an attempt to protect her as the complainant. On November 6, 2023, the appellant reviewed her statement and electronically signed it. Additionally, the EEO/AA argues that it found no corroboration that D.F. stated that the appellant was “too hard” to be a supervisor. It also asserts that the investigation found numerous promotions of black females throughout D.F.’s tenure with MVC, including the time she was Director of Human Resources. Additionally, the investigation found that a manager on the interview panel brought it to the attention of the other panel members that D.F. strongly inferred that the selected candidate be hired. All witnesses denied that D.F. directed them to change this candidate’s score, but one witness did indicate that D.F. inferred and strongly indicated that the score should be changed. No witnesses corroborated that these inferences were due to the appellant’s race. Nevertheless, this matter was referred for an ethics review. With regard to the Covid-19 overtime allegations, the Division of EEO/AA explains that the appellant did not provide a protected category for why she believes she did not receive overtime pay. However, the investigation looked into the matter and determined that she was treated the same as other MVC employees with regard to Covid-19 overtime pay. It contends that any further issues regarding overtime should be directed to the MVC Human Resources Office.

Further, the Division of EEO/AA indicates that the appellant became a Personnel Assistant 2 in January 2021. Since this promotion she has been a lead employee in her unit and therefore could disburse work to the unit, and lead in the supervisor’s/manager’s absence. However, the appellant’s PAR confirms that she is not a supervisor. Moreover, the investigation found that the employees the appellant had named as getting promotions in conjunction with work behaviors and or demographics of such employees, had all been promoted due to classification reviews. This includes the appellant who was promoted through this process in 2018 and 2021. No implicit bias against black women was found. With regard to the allegations of retaliation, the investigation could not substantiate the appellant’s claims. It found no approvals for Personnel Assistant 1 positions from November 10, 2023, through January 31, 2024. Furthermore, the Division of EEO/AA notes that it substantiated the appellant’s claim that D.F. said she would get overwhelmed if promoted and could go out on leave. Finally, the Division of EEO/AA submits that it appeared as though the appellant interfered with the investigation by obtaining confidential information and that she may have tampered with witnesses. It asserts that several of the appellant’s witnesses seemed to have rehearsed their testimony and used the same exact phrases when describing the interview scores and the applicant’s relationship with the other candidate. The Division of EEO/AA also states that the appellant and two witnesses withheld information about the status of an employee, indicating that

the employee had retired when in fact they were working part-time in the appellant's unit.

In reply, the appellant disputes the Division of EEO/AA's assertion that it did not want to interview her at MVC to protect her because if this were true why did it interview witnesses and others on days when she was at work. She also reiterates that she was not able to sign her statement. The appellant reiterates her arguments about the time period D.F. served as Director of Human Resources and the lack of black female promotions. Additionally, the appellant denies interfering with any witnesses in this matter. Further, the appellant claims the Division of EEO/AA failed to correctly address the finding of wrongdoing during the interview and the changing of scores. The appellant also reiterates her arguments about not being paid for Covid-19 overtime hours. Moreover, she contends that the Division of EEO/AA's determination that she was not performing supervisory duties was incorrect and that it did not conduct a proper investigation into this allegation. Finally, the appellant presents her arguments again concerning retaliation in not receiving a promised promotion after filing her complaint.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, 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) provides, in pertinent part, 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 opposed a discriminatory practice, is prohibited by this policy.

N.J.A.C. 4A:7-3.1(i) provides that the burden is on the complainant to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.

N.J.A.C. 4A:7.3-2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

*N.J.A.C. 4A:7.3-2(m)*4 states that the appellant shall have the burden of proof in all discrimination appeals.

In response to the appellant's complaint, the Division of EEO/AA conducted an investigation that substantiated in part the appellant's claims that a violation of the State Policy had occurred. The investigation included interviews and the collection and review of documents pertinent to the allegation. It found no corroboration by witnesses or evidence that D.F. said the appellant was "too hard" to be a supervisor. It also found 15 promotions of black women in the Employee Services during D.F.'s tenure. Further, the investigation determined that there was no nexus between the allegation that D.F. had scores of an interview changed to have an acquaintance receive a promotion and a protected class but did refer the matter to the ethics office for further review. With regard to the Covid-19 overtime allegations, the Division of EEO/AA maintained that the appellant did not provide a protected category for why she believed she did not receive overtime pay, but the investigation did determine that she was treated the same as other MVC employees with regard to Covid-19 overtime pay. Moreover, the investigation could not substantiate the appellant's allegations about her being denied a Personnel Assistant 1 promotion due to retaliation for her having filed a discrimination complaint. It found that the MVC's Human Resources Office had filed a critical need with the Governor's Office for a Personnel Assistant 1 in the Leave Management Unit in November 2023, but as of January 2024, it had not received approval for this position. Finally, the investigation did substantiate that D.F. had stated that she was concerned about promoting the appellant because she could get overwhelmed and go out on leave again.

On appeal, the appellant makes numerous allegations about the lack of a thorough investigation and claims that the Division of EEO/AA misrepresented facts. She alleges that it did not offer to meet with her at MVC, yet it did offer to meet with her in person at CSC which she declined. The appellant asserts that the EEO/AA did not accurately represent the facts regarding the promotion of black women under D.F., Covid-19 overtime payments, her performing supervisory duties, and her claims of retaliation in the determination letter. However, these claims were adequately addressed and expounded upon in the Division of EEO/AA's response to the present appeal. Further, the appellant argues about allegations that were substantiated in part. The allegations about the interview scores being changed, although not found to be a State Policy violation, and D.F.'s statement that the appellant would be overwhelmed if promoted and could go out on leave were substantiated and referred for administrative action. The appellant cannot continue to challenge these findings as only unsubstantiated findings can be challenged in the context of a State Policy appeal. Moreover, other than her mere allegations, the appellant has not presented any facts or evidence to support her claims of discrimination, retaliation, or that the investigation was not thorough and impartial.

The determinations made by the Division of EEO/AA in this matter were well reasoned. Moreover, the appellant has not provided any persuasive substantive

evidence in support of her contentions that she was subjected to a violation of the State Policy. Therefore, the appellant has not sustained her burden of proof in this matter. Accordingly, based on the foregoing, no basis exists to find further violations of the State Policy beyond what was found in the determination.

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 26TH DAY OF FEBRUARY, 2025

Dolores Gorczyca

Dolores Gorczyca
Member
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: B.C.
Angela Lamorte
Records Center
Division of Equal Employment Opportunity/Affirmative Action