



STATE OF NEW JERSEY

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

In the Matter of A.A., Department of
Environmental Protection

CSC Docket No. 2024-2597

Discrimination Appeal

ISSUED: March 19, 2025 (EG)

A.A., a former Manager ¹, Environmental Protection, Department of Environmental Protection (DEP), appeals the determination of the Assistant Commissioner, Management & Budget, DEP, stating that the appellant failed to present sufficient evidence to support findings 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 with the DEP Office of Equal Opportunity & Public Contract Assistance (OEO) on August 30, 2022, alleging that former Assistant Commissioner V.M.,² discriminated against her based on sex/gender, marital status, familial status, and retaliated against her. Specifically, she alleged that V.M. discriminated against her when during a Saturday phone conversation, he asked how she was handling her work/life balance and her child custody arrangement. Additionally, the appellant alleged that V.M. delayed her promotion to Director. Further, she alleged V.M. inappropriately inserted himself into the selection process for a Bureau Chief position in her division and confronted her during a Directors meeting about his disagreement with her selection. The appellant also alleged that V.M. excluded her from meeting concerning the transfer of full-time employee (FTE) positions out of her division. Moreover, she alleged that

¹ The appellant resigned from State service effective March 8, 2024.

² V.M. is currently serving as a Government Representative 2.

V.M. harassed and discriminated against her by disagreeing with her decision on seating arrangements for an employee in her division, and that he intentionally maligned her to her subordinates, colleagues, and superiors. Finally, the appellant alleged that V.M. retaliated against her.

In response to the appellant's complaints, the OEO conducted an investigation and found that the appellant's allegations could not be substantiated that a violation of the State Policy had occurred. The investigation included interviews and the collection and review of pertinent documents. The investigation found that given the context, V.M.'s questions about work-life balance and child custody were not inappropriate or discriminatory. It indicated that the conversation occurred on a Saturday and as the appellant was new to her role of Director, V.M. was generally asking how she was handling her work-life balance. Additionally, when the appellant stated concerns about work interfering with time with her children, it was appropriate for V.M. to follow-up with questions to better understand the situation so he could identify ways to support the appellant. Further, the OEO did not find any evidence that V.M. negatively used any information about the appellant's marital or familial status in his supervision of the appellant or in the evaluation of her work performance. Moreover, the investigation found no evidence that V.M. delayed the appellant's promotion. Rather, it found that V.M. supported her promotion and promptly moved her promotion forward once the final decision had been made.

With regard to the allegation that V.M. had inappropriately inserted himself into the selection of a Bureau Chief in the appellant's division, the investigation found non-discriminatory reasons for V.M.'s involvement, which included his prior work experience with the program the Bureau Chief would lead and his work history with the top candidates for the position. The investigation did corroborate that V.M. engaged in a heated verbal discussion with the appellant about the Bureau Chief position during a Directors meeting. However, it did not find any evidence that V.M. yelled at the appellant or otherwise used inappropriate, demeaning, or discriminatory language. In addition, the investigation could not identify any particular meetings that the appellant was inappropriately excluded from regarding FTEs in her division. Further, it found that the appellant participated in meetings with the Assistant Director who was overseeing the FTE issue and with Human Resources in which the FTE transfers were discussed and explained.

Moreover, the investigation found no evidence that V.M. disagreed with or questioned the appellant's decision on where to seat one of her employees. It also found no evidence that V.M. maligned the appellant to any subordinates, colleagues, or superiors. Furthermore, the investigation found no retaliation as the standard in the State Policy for retaliation did not apply as the appellant had not previously filed a complaint with OEO.

On appeal, the appellant argues that that the Saturday meeting was at V.M.'s request and that she did not see this happening with her white counterparts. Additionally, she asserts that as a single black woman having a white man questioning her ability to maintain work-life balance and asking about the custody arrangement for her children are clear "racist tropes" frequently directed at black women. With regard to her promotion, she contends that the position of Division Director is an appointed position with no requirement to interview. The appellant argues that two of her white counterparts were promoted to their Director positions without the formality of an interview process. Further, while V.M. informed her that her promotion was taking time because the interview panel was unable to reach a decision and that it was out of his hands, as the Assistant Commissioner he had the authority to make an "executive decision" without a consensus and opted not to do so.

Moreover, with regard to the Bureau Chief selection process, the appellant alleges that she felt pressure from V.M. to select the white male candidate over the similarly qualified black male, who scored higher in the interview panel's rankings. She claims that V.M. added an extra person to the interview panel to try to ensure he got the outcome he wanted. Furthermore, she maintains that during the deliberation and scoring portion of the panel, V.M. advocated strongly for the white candidate and suggested that the scoring be redone after he learned that the black candidate had scored higher. The appellant adds that V.M. called her on her personal cell phone to pressure her to select his preferred candidate. She states that when Human Resources learned of what happen during the panel deliberations and after, it instructed the panel to hold a second round of interviews without V.M.'s involvement. Additionally, during the Directors meeting, V.M. singled her out and yelled at her in front of her colleagues. The appellant contends that she has never seen or heard of V.M. publicly attacking white colleagues in the same manner she was treated. The appellant also alleges that she felt V.M.'s behavior towards her was both humiliating and undeserved, and believes it was racially motivated. The appellant provides copies of a text string with another Director at the meeting in which the other Director appears to indicate her displeasure with V.M.'s actions towards the appellant at the meeting.

Regarding being excluded from meetings and discussions related to staff, the appellant alleges that she was not made aware of staffing changes that her white colleague had been informed of. She asserts that she was not formally informed of the upcoming changes until she had found out about them inadvertently. The appellant also asserts that she provided OEO with the name of witnesses who indicated V.M. was speaking poorly about her. She said one witness told her V.M. had stated that he made the mistake of not picking the right people for the leadership positions. The appellant claims that V.M. was referencing her in that conversation as all the other candidates for her position were white. In support of her claims, she provides a text string with this witness. Further, the appellant argues that she filed an OEO complaint against V.M. with his successor Assistant Commissioner on July

22, 2023, alleging retaliation and reprisal but had yet to receive a determination of that claim.

In response, the OEO asserts that the appellant failed to acknowledge that V.M. moving the call to Saturday was a one-time occurrence due to scheduling conflicts. It further indicates that moving a call to the weekend to discuss ongoing matters within the division is not an unusual expectation for a Director, who holds a high-level managerial position. Additionally, it reiterates the findings of the investigation in stating that the appellant raised concerns about work interfering with her time with her children, and that it was appropriate of V.M., as her supervisor, to ask follow-up questions to better understand her situation, so he could identify ways to support her, and not in itself a violation of the State Policy. Further, V.M. mentioned to OEO investigators that when he recognized that the appellant was not comfortable discussing family details, he refrained from asking further personal questions. Further, the OEO reiterates that the investigation found no evidence that V.M. caused any delay in the appellant's promotion. The OEO also explains that the appellant's Director position required an interview process as it was different than those of her colleagues as it was a newly created position which needed to establish what the role and responsibilities of the new Director would be. Moreover, the OEO noted that unlike the other Directors referenced by the appellant, the appellant had no prior management-level experience before being promoted to her Director position. Furthermore, the OEO points out that the appellant was incorrect in stating that V.M. could just have appointed her to the Director position. It asserts that such an appointment had to be signed off by the Commissioner.

With regard to the selection of Bureau Chief in the appellant's division, the OEO reiterates the investigations findings on this issue. It also asserts that V.M. had non-discriminatory reasons for preferring one candidate over another. V.M. indicated that his preferred candidate had previous supervisory experience as a Section Chief while the other candidate did not. V.M. also provided that he had worked with the selected candidate on a project in which this candidate failed to review and decide on an application in a timely manner causing the application to be automatically approved without DEP comment. Additionally, V.M. felt that the candidate did not take ownership of this issue and his failure to complete a significant job responsibility. Further, regarding the Directors meeting, OEO reiterates the investigations finding that V.M. did not yell or use any otherwise inappropriate, demeaning, or discriminatory language. Moreover, the investigation found that the verbal debate was not engaged in because of the appellant's membership in any protected category. Rather, the debate was due to V.M.'s disagreement about the selection of the Bureau Chief. V.M. later apologized to the appellant via text.

Furthermore, OEO reiterates the investigations findings that V.M. did not exclude the appellant from meeting regarding FTE transfers and movements. No evidence was found that the appellant was excluded from any meeting she should

have been a part of. Lastly, the OEO indicates that the appellant did not identify any specific subordinates, colleagues, or supervisors to whom she believed V.M. maligned her or allege any specific comments she believe were made by V.M. The colleague identified by the appellant on appeal and the text chain were only provided in the appellant's second complaint, filed February 14, 2024, for which a determination had not yet been issued.

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 (including 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 brought before the Civil Service Commission.

In response to the appellant's complaints, the OEO conducted an investigation that concluded that her allegations could not be substantiated 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 that V.M.'s questions about work-life balance and child custody were not inappropriate or discriminatory, and when the appellant stated concerns about work interfering with her time with her children, it was appropriate for V.M., as her superior, to follow-up with questions to better understand the situation so he could identify ways to support the appellant. It also found that V.M. had supported her promotion and promptly moved her promotion forward once the final decision had been made. Additionally, the

investigation found non-discriminatory reasons for V.M.'s involvement with the selection of the Bureau Chief. Further, it did not find any evidence that V.M. yelled at the appellant or otherwise used inappropriate, demeaning or discriminatory language during the Directors meeting. Moreover, the investigation could not identify any particular meetings that the appellant was inappropriately excluded from regarding FTEs in her division. Furthermore, the investigation found no evidence that V.M. disagreed with or questioned the appellant's decision on where to seat one of her employees and found no evidence that V.M. maligned the appellant to any subordinates, colleagues, or superiors. Lastly, the investigation found no retaliation as the standard in the State Policy for retaliation did not apply as the appellant had not previously filed a complaint with OEO.

On appeal, the appellant reiterated her allegations that V.M.'s Saturday call to her and questioning her work-life balance and child custody situation was discriminatory. She also reiterated that V.M. could have expedited her promotion and that she was required to undergo an interview process that her white counterparts did not have to. Additionally, she alleged that V.M. inserted himself into the interview and selection process for the Bureau Chief because he wanted to select the white candidate. Further, she asserts that V.M. yelled at her at the Directors meeting because she was a black female, and that he had not done this to any of her white colleague. Finally, the appellant alleged that the appellant had been speaking poorly about her to subordinates, colleagues and supervisors.

The determinations made by the OEO in this matter were well reasoned. The OEO's investigation indicated the non-discriminatory reasons for the Saturday phone call, the questions about the appellant's work-life balance, the selection of the Bureau Chief, and the heated discussion at the Directors meeting.³ It also provided reasons as to why the appellant had to interview for her Director position and found that V.M. was supportive of her promotion and that he could not sign off on her promotion without Commissioner approval. Additionally, OEO found that V.M. had not excluded her from any relevant meetings. Further, OEO indicated that the appellant had not identified any specific subordinates, colleagues, or supervisors to whom she believed V.M. maligned her or alleged any specific comments she believes were made by V.M. that were in violation of the State Policy. The colleague identified by the appellant on appeal and the text chain were only provided in the appellant's second separate complaint. Moreover, the appellant has not provided any persuasive substantive evidence in this matter to support 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 and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

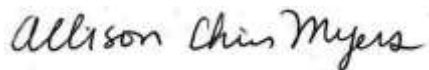
³ It is noted that, absent a nexus to a State Policy protected category, disagreements between co-workers cannot sustain a violation of the State Policy. See *In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003).

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 19TH DAY OF MARCH, 2025



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