



STATE OF NEW JERSEY

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

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

CSC Docket No. 2025-1404

Discrimination Appeal

ISSUED: April 30, 2025 (SLK)

S.R., a Quality Assurance Coordinator (QAC) with the Division of Aging Services (DoAS), Department of Human Services, appeals the determination of an Assistant Commissioner, which was unable to substantiate that she was subject to a violation under the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, S.R., who is 66 years old, alleged that she was subjected to age discrimination. Specifically, she alleged that she should have become a permanent Regional Staff Nurse, Medical Assistance (RSN) on July 11, 2015, but she did not until 2017. S.R. alleged that the DoAS did not give her notice for a Quality Assurance Specialist (QAS) promotional examination in September 2016. Additionally, S.R. alleged that the DoAS appointed two younger and less qualified employees to Qualified Assurance Coordinator (QAC) in 2016 and 2020, and she was treated differently than the younger employees due to her age. The Equal Employment Officer (EEO) investigation revealed that in 2016, Civil Service rules did not require notices for promotional examinations be emailed to potential eligible employees as appointing authorities were only required to post these announcements on message boards and/or websites. Instead, the onus was on the employee to view the message board for promotional examinations that applied to their current positions. Further, there was no evidence that S.R. reviewed the message boards or websites for applicable promotional examinations, and she did not request a desk audit regarding her position.

Concerning the younger employees that were promoted to QAC instead of S.R., the investigation revealed that S.R. was not serving in a title that was eligible to be promoted to QAC at that time, and the DoAS was following Civil Service rules by promoting employees who were qualified and serving in eligible positions, regardless of age. Therefore, the investigation was unable to substantiate S.R.'s claims.

On appeal, S.R. presents that she first learned after reading the Civil Service Commission's (Commission) decision in August 2023, that she acquired permanent status as a RSN on July 11, 2015. She highlights that her superiors never advised her of this. Instead, L.M., her supervisor who is a Program Manager Health/Human Services, informed her in 2015 that she was a RSN with provisional status, and S.R. would not be eligible for promotions until she became a permanent RSN. S.R. states that she received an email from L.M. to apply for a permanent RSN position. She emphasizes that if she knew that she was already permanent in this title, she would not have applied for it again.

S.R. indicates that she discovered in 2023 that the "Lead Reviewer" title was designated by Civil Service as a QAS.¹ She provides that S.P., who is much younger than her, was a "Lead Reviewer" in 2016 when she was appointed as a QAS. Therefore, she questions why her superiors did not email her about the announcement for that QAS promotional examination. Additionally, S.R. asserts that her superiors appointed another much younger employee as a QAS who was not even a "Lead Reviewer." Moreover, S.R. believes that based on organizational maps for staffing and budgeting, her superiors were aware of the situation but chose to do nothing about it. Therefore, S.R. contends that she was discriminated against due to age. She notes that she was not appointed as a QAS until February 2022, and she was never made aware that she could file for a position classification review as she never received a new employee handbook. Concerning the statement that the onus was on her to review the website for promotional opportunities, she states that she was unaware that she was a permanent RSN, which is why she did not look for promotional examinations. Additionally, she claims that since by statute, an employee is not supposed to be provisional for more than 12 months, she argues that the onus was on her superiors to inform her of promotional opportunities. She requests that this agency do an investigation for possible misconduct or violations of Civil Service law and rules by her superiors. Additionally, she requests back pay, interest, and pension benefits that she did not receive by not being appointed as a QAS between 2016 and 2022.

S.R. submits an email to demonstrate that she was erroneously labeled a provisional RSN in 2016, and she reiterates that she would have applied for a QAS promotional examination if she had been provided the correct information. She

¹ The "Lead Reviewer" title is apparently a DoAS working title. This agency does not specify the equivalent Civil Service titles for an appointing authority's working title.

claims that it does not make sense that her superiors did not correct a situation which she believes indicates that she was not promoted due to age discrimination in favor of younger employees. To support S.R.'s claim of age discrimination, she submits her new hire checklist that shows which documents she reviewed at the time she was hired; a May 2016 email from a superior to demonstrate that she was advised that she was a provisional RSN in May 2016 and she should apply for a RSN promotional examination; a personnel action form that indicates that her permanent appointment as a RSN was effective April 3, 2017; a February 2017 email stating that she has been selected for a RSN position; and a letter informing her that she was permanently appointed as a RSN, effective April 3, 2017. She notes that she submitted this information for various discrimination and retaliation complaints and grievances that she filed. S.R. asserts that the DoAS could have easily corrected the situation throughout these past nine years. Additionally, S.R. provides various organizational maps for various years to demonstrate that younger staff were promoted instead of her. Moreover, she attaches descriptions of job titles, job responsibilities, and job standards to support her claim that she believed that she was not serving in the correct title. Further, S.R. supplies the footnote from the Commission's August 2023 decision where she was informed that she was permanent as a RSN, effective July 11, 2015, which she asserts that the DoAS should have easily discovered.

S.R. argues that her superiors did not follow Civil Service rules when it provisionally appointed QACs in March 2022 instead of using the active eligible list for that title. She submits the eligible list for a QAC (PS4578K), DoAS promotional examination to support her assertion. S.R. believes that this was done so that only younger employees could be promoted. Also, S.R. provides documentation which indicates that she had been approved for medical leave from February 2, 2022, until April 3, 2022. However, she highlights that a promotional opportunity was filled on March 26, 2022, before she had internet access. Therefore, she claims that by law, she was subject to age discrimination and New Jersey Family Leave Act (FLA) retaliation on that date. Further, upon her return to work, the DoAS did not contact her about the promotional opportunity, and she only discovered this on her own in July 2022. She claims that she later learned that she was "set-up" by L.M. to be prevented from applying for promotional opportunities.² S.R. indicates that L.M. confiscated her State computer and phone when she went on leave, which she asserts was against Division policy³ so that she could not view and apply for promotions, while others who were on leave were allowed to take their State issued equipment. Additionally, although the appointing authority has conducted four State Policy investigations, and it claims that they were thorough and impartial, as evidenced by

² S.R. has not submitted any statement from a confirming witness or other evidence that supports her statement that someone advised her that "L.M." set her up.

³ The policy document that S.R. submits states that "If an employee is anticipated to be on leave for more than 30 days, all building access keys must be collected, the building access card must be deactivated, and the employee's computer systems must be disabled. Please coordinate with your facilities management and IT offices."

a certification by one of the investigators that she provides, she argues that this was not the case since she was not interviewed. Instead, S.R. indicates that she was emailed biased questions which supported its opinion as to what happened. She believes that the EEO investigator did not follow the State's Model Procedures concerning how investigations are to be conducted. She emphasizes the aforementioned documents and arguments to illustrate that the investigations were not proper.

Additionally, S.R. submits an email where she requested from the appointing authority the January 2023 investigation report regarding her claimed age, Family and Medical Leave Act (FMLA) leave, and State FLA discrimination that she experienced in March 2022 and September 2022. She stated that if she did not receive this report, her current Equal Employment Opportunity Commission (EEOC) investigation would be negatively impacted. Further, she provides the reply email from the appointing authority indicating that the investigation report could not be provided because these reports are confidential under State rules to protect the integrity of the investigation, including the employees interviewed, to minimize retaliation. The appointing authority also stated that it believed that S.R. had sufficient information about the investigation through its determination letter and response to her appeal with this agency. S.R. presents her response emails where she replied that she did not have all the information and she contended that she lost her discrimination appeal because it was too general and she did not name the specific individuals who discriminated against her, which is difficult for her to do without the report. Moreover, S.R. attached an email from the EEO where it reiterates its position that she has the information based on the determination and its responses to her prior appeal. S.R. provides the names of specific employees who she claims did not comply with Civil Service promotional rules or who were aware that these rules were not being complied with in order to promote younger employees.

S.R. presents emails about her personnel record, which she claims were not accurate. In the Commission's prior decision, it indicated that she was permanently appointed as a RSN on July 11, 2015, based on its review of her personnel record. However, S.R. submits an email from the appointing authority to this agency which stated that this was not correct as she was not actually permanently appointed as a RSN until April 3, 2017. Therefore, the appointing authority asked this agency to correct her personnel record, which this agency did. A review of S.R.'s corrected personnel record now indicates that she was permanently appointed as a RSN, effective April 3, 2017, and she had been serving provisionally subject to open examination procedures from July 14, 2014, until April 3, 2017.

In response, the appointing authority presents that S.R. chose not to participate in the EEO's investigation. It submits emails to indicate that the investigator made multiple attempts to interview her for the subject matter, but she rejected those requests for interviews. Further, although the EEO asked about the

matter that was eventually determined in the Commission's February 5, 2025, decision to help with the investigation, she refused to provide it. Additionally, the appointing authority asserts that most of S.R.'s issues in the current matter have previously been decided, and it will only respond to the most recent complaint.

Concerning S.R.'s allegation that the DoAS did not give her notice of a QAS promotional examination in 2016, the investigation revealed that at that time, the applicable Civil Service rule indicated that it was the appointing authority's discretion as to how examination notices were distributed, and in 2016, the onus was on S.R. to review the website or the bulletin board regarding promotional announcements. Regarding S.R.'s assertion that the DoAS was required to offer her an examination for a permanent appointment within one year of her provisional appointment as a RSN, the appointing authority indicates that the DoAS does not have that authority as only this agency announces Civil Service examinations. Thereafter, in May 2016, the DoAS followed protocol when this agency announced a promotional examination for RSN by requesting that S.R. apply for it so that she could become permanent in her position. The appointing authority notes that while S.R. likens receiving notice of a promotional examination to being awarded the position of QAS, even if she had been given notice, applied, and added to the eligible list, it is unknown as to whether she would have been appointed as someone more qualified may have been appointed. Therefore, it asserts that S.R.'s suggested remedy of a retroactive appointment as a QAS with back pay and benefits is not warranted.

Regarding S.R.'s equating being a "Lead Reviewer" as being a QAS, the appointing authority indicates that Lead Reviewer is a working title and not a Civil Service title, and S.R.'s assumption that she should have been appointed as a QAS based on her Lead Reviewer working title is incorrect. Referring to S.R.'s complaint where she indicated that she asked L.M. to have her Civil Service title changed, as indicated in a prior Commission decision, she never asked for a position classification review. The appointing authority asserts that S.R.'s believes that it was the DoAS's responsibility to propel her career forward. However, the Commission already decided this issue.

Moreover, the appointing authority indicates that S.R. alleged that the DoAS offered QAC positions to two younger employees in 2016 and 2020, stating this constitutes age discrimination. However, it presents that these two younger employees held titles to which the subject QAC promotional examinations were open. As previously held by the Commission, S.R. did not present any confirming evidence that those appointments were made for discriminatory reasons. Similarly, in this matter, S.R. has not presented any confirming evidence to support her discrimination claims and the investigation did not reveal any such evidence.

In reply, S.R. asserts that the appointing authority continues not to recognize strong evidence that she was subjected to age and FLA discrimination. She reiterates her claims that in January 2023, the EEO did not conduct an investigation as required. S.R. notes that in the Commission's August 2023 decision, it indicated that she was supposed to be permanent as a RSN as of July 11, 2015; however, the January 2023 investigation did not discover this. Therefore, she believes that since two younger employees were promoted to QAS in 2016 and 2020, she was treated unfavorably.

Regarding the appointing authority's statement that S.R. refused to participate in the subject EEO investigation, she provides that she had filed a grievance that she had worked out-of-title. Thereafter, in November 2024, she appealed the grievance determination to this agency. S.R. explains that before participating in the subject investigation, she wanted to see the Commission's determination concerning her grievance appeal. Further, based on the prior investigations, she did not think that she had anything more to add although she does appreciate that the investigator did reach out to assist her. She disagrees with the appointing authority's claim that she is resubmitting the same information that was submitted in matters already decided. S.R. contends that when she first filed an appeal with this agency, she did not completely articulate how the DoAS did not comply with promotional rules so that it could promote younger employees. However, she indicates that she is submitting only recently discovered information such as L.M. confiscating her State equipment improperly while she was on leave in 2022 so that she could not apply for a QAC promotional examination. S.R. highlights her belief that she was subjected to age discrimination and disparate treatment because she was left as a provisional RSN for three years. She claims that she had more experience than the younger two employees who were promoted in 2016 and 2020. Also, referring to comments that she could have asked for a position classification review, S.R. provides that when she asked L.M., her supervisor, she was following her chain of command. As a new State employee, she did not want to risk her employment, and she never received any information about classification reviews.

Concerning S.R.'s State FLA retaliation complaint, she states that she has fully explained this. She presents email evidence to show that her State equipment was taken away from her while on leave in 2022, and, therefore, she did not receive any notification about this position. She states that she provided emails from other employees who were allowed to have their State equipment while on leave. However, S.R. reiterates that she did not learn that her supervisor was not following policy until July 2023, and she asserts a thorough and impartial investigation by the EEO should have discovered this.

Referring to the claim that S.R. has not submitted any confirming evidence, she submits a sworn statement from L.L., a QAS who is 58 years old, who stated that C.M., a QAC who is 62 years old, indicated that she applied for a QAC position, and

her superiors told her that there were two positions available in their office. However, the positions were filled by provisional appointments. C.M. provided that she was upset since she had been a QAS (P26) for several years and the only interviewee who was on the active eligible list. C.M. indicated that she was going to “invoke the rule” because of the provisional appointees, T.B., age 48, was only a RSN (P25) and “much younger” and “without any prior upper-level managerial experience.” S.R. also submits the questions from an EEO investigator that she completed in January 2023, and she emphasizes that there was not any follow-up interview. Further, S.R. attaches her email communication in July 2022 with human resources concerning a QAC examination that was originally announced in January 2022.

Regarding S.R.’s allegation that she suffered age, FMLA and FMLA discrimination because L.M. improperly administered the policy regarding State equipment for an employee who was on leave for over 30 days, she asserts that this allegation should have been substantiated. She presents that L.M. confiscated her equipment and left it in her office on February 1, 2022. However, she states that the younger employee who was promoted before S.R. had access to her equipment. S.R. claims that her superiors manipulated Civil Service rules so that only younger employees could be promoted. Further, S.R. believes that her allegations that certain human resources staff should have reported the incorrect administration of her State equipment should have been substantiated. S.R. also explains in detail why other allegations should have been substantiated. S.R. submits a December 2021 statement from a staff meeting that states that if an employee is anticipated to be on leave for more than 30 days, that employee’s computer systems must be disabled. She further submits an email from L.M. which confirms that S.R. turned in her equipment when she went on leave on February 1, 2022. Additionally, S.R. provides emails from staff who had been on FMLA who were permitted to have their equipment home with them while on leave.

S.R. argues that the EEO’s alleged failure to investigate her FMLA complaint in January 2023 had a negative impact on her civil rights. However, she states now that she knows that she was permanently appointed as a RSN, effective July 11, 2015, she can explain how younger employees were favored, and she was subjected to a pattern of disparate age discrimination. She asserts that the appointing authority never addressed her age discrimination allegation in her complaint. Further, she notes that she never had a working test period based on her July 11, 2015, permanent appointment. Additionally, she claims that she was performing the out-of-title duties of a QAS as a Lead Reviewer from June 2016 until her appointment as a QAS on January 29, 2022, but the DoAS failed to inform this agency as required under Civil Service rules. She states that it does not make sense that in 2016, she was sent to apply for an examination for a permanent position as a RSN when she was already permanent in that title. S.R. reiterates her claim that since much younger employees who served as Lead Reviewers were promoted in 2016 and 2020, she was discriminated based on age. Additionally, S.R. claims that the appointing authority’s

Employee Relations Coordinator misrepresented Civil Service promotional rules during her September 29, 2022, grievance meeting as there was an older employee on the list, C.M., who wanted the QAC position, but instead a younger employee who was not on the list was provisionally appointed.

S.R. disagrees that the EEO's investigation was thorough and impartial in compliance with the State Policy and the Model Procedures. She reiterates that she was never interviewed by the investigator after she completed the investigator's survey in January 2023. S.R. claims that the Division of Civil Rights (DCR) determined that the EEO did not perform an investigation and the EEO did not send it to the DCR. Therefore, she claims that her civil rights were violated. S.R. restates her position that she was discriminated against because younger employees were promoted instead of her. S.R. argues that because interviews were not conducted, she did not have an opportunity to present her case and the Model Procedures were not followed. She believes that it was impossible for the appointing authority to make a determination in this matter because she was not interviewed.

S.R. presents that under the FLA, upon return from leave, an employee shall be restored to the position immediately held. Therefore, since a promotional opportunity occurred while she was on leave, she contends that her rights were violated because she was not given that promotional opportunity. Consequently, she claims her superiors were not compliant with the law and retaliated and discriminated against her.

Concerning a QAC position in 2018, S.R. states that it was not posted on a bulletin board as stated in the determination. Regarding a position when she returned to work in 2022 where the determination stated that she failed to apply until July 2022, she asserts that she did not know about the position until July 2022. She states that the Commission revealed that she was supposed to be permanent as a RSN in July 2015, and her position as a Lead Reviewer should have aligned with a QAS position in 2016. Instead, she provides that two younger employees were promoted in 2016 and 2020 while she was not promoted to QAS until February 2022. Therefore, it is a lie when the determination states that her superior approved a request for her to be promoted to QAS in October 2020. She considers it a false statement when L.M. stated to investigators that she did not know that S.R. was working out-of-title since she was involved in staffing and relied on organizational maps and job descriptions.

In further reply, the appointing authority asserts that S.R. is arguing issues that were not part of her complaint filed on September 20, 2024, and only issues in that complaint should be considered. The appointing authority presents that the only issues in her current complaint, which it attaches, is as follows:

Was supposed to have had a permanent title of RSN in 7/11/15. Instead, Appointing Authority did not offer me the test for QAS in Sept. 2016. I just found my paperwork verifying I was not offered the appropriate test. In the Northern Regional Office, the Appointing Authority offered promotional QAC tests to 2 younger and less qualified employees. (2016, 2020) I was treated differently. This is Age Discrimination; [disparate] treatment.

It emphasizes that these are the only issues in this appeal. The appointing authority believes that S.R. is attempting to appeal issues from a different complaint that she filed on November 30, 2023, as she specifically addresses why she believes that each determination is incorrect.

The appointing authority submits present allegations versus past allegations. It provides that S.R. continues to claim that the EEO did not conduct a thorough investigation regarding a complaint she filed on November 29, 2022. It states that the investigation concluded on February 13, 2023. S.R. submits a certification from the investigator where the investigator certified that the statements made by him were true. Thereafter, S.R. appealed the determination in that matter, which the Commission denied on August 2, 2023.

The appointing authority indicates that throughout several investigations and appeals, S.R. attempted to readdress the same issues regarding her FMLA and receiving a promotion. It states that she is trying to achieve the same results, which is the receipt of the QAS title from 2016 to 2022 with back pay and benefits. The appointing authority claims that S.R. is making arguments that are not relevant to the subject matter, which is her employment status in 2016 and whether the DoAS discriminated against her based on age regarding her permanent status on July 11, 2015. However, the investigation revealed that her personnel record had previously mistakenly been modified to indicate that her permanent status as a RSN was effective July 11, 2015. The appointing authority submits an email from its human resources which explains what happened. Specifically, the email explains that Governor Christie had frozen step increases. In 2018, after Governor Murphy took office, employee anniversary dates (ADs) were updated to include ADs that were missed. In S.R.'s case, her missed ADs included July 11, 2015, and July 9, 2016. However, the person who updated her personnel record mistakenly changed her appointment type as a RSN on July 11, 2105, to be permanent. However, the change in ADs had no impact on appointment types. Instead, S.R.'s appointment did not change to permanent as a RSN until April 3, 2017, when she was appointed off an eligible list/certification. Therefore, the appointing authority asserts that S.R. was correctly notified about the RSN promotional examination in 2016.

Further, the appointing authority reiterates that S.R.'s submission concerning a QAC position that was posted in 2022, where she submitted attachments regarding

FMLA leave and other employees who were promoted in 2022 have already been decided. Similarly, it presents that S.R. submitted her entire interview statement from her first EEO complaint, which undermines her assertion that an investigation was not completed. The appointing authority indicates that taking a statement via email is not uncommon and does not violate the Model Rules as the Model Rules do not indicate how an investigation must be completed and do limit the format in which an investigator must conduct interviews. It contends that after four separate EEO investigations and appeals, several union grievances, a grievance hearing, and involvement with the DCR, S.R.'s concerns have been thoroughly addressed.

In further reply, S.R. contends that she is not rehashing issues as the appointing authority contends as the change in her appointment type is a new issue. She believes that the fact that the EEO did not address or discover this is an example that its investigations were not thorough. S.R. asserts that since human resources did not notify her of the change, this is also another example of the appointing authority not being transparent with her. Moreover, S.R. questions why the January 2023 investigation did not look into why she was provisional for more than three years. She highlights that the DCR stated that the EEO did not complete an investigation in January 2023. Also, S.R. indicates that she is still waiting for confirmation from this agency as to whether the appointing authority's human resources' explanation regarding her personnel record is accurate.

S.R. states that it appears that human resources failed to properly update her employment record. She reiterates that she had been provisional for three years as a RSN, then she received new information in August 2023 that she was permanent as a RSN in 2015, and now human resources, eight to 10 years later, is stating that this is incorrect. S.R. believes that since the prior EEO investigations did not address this, those investigations were not thorough. Further, she emphasizes that the investigator from the January 2023 investigation did not follow-up or interview after she responded to his "biased" questions, which is in contrast to how other EEO investigators investigated matters. She disagrees with the assertion that an interview can be done in written format as she states that interview is defined as a "meeting of people fact-to-face, especially for consultation." S.R. submits a graphic from Civil Service discrimination training which demonstrates that the interview is conducted face-to-face. She argues that the January 2023 investigation could not be completed without speaking with her to gain follow-up information and tone. She notes how important interviews are in nursing to determine how serious a health issue is. S.R. highlights how differently the other investigators gather information by speaking with her and this shows that the January 2023 investigation, which did not involve the investigator speaking with her, was not thorough.

S.R. reiterates that she served provisionally as a RSN for three years, which violated Civil Service law. Further, she repeats that according to the job description in 2016, as Lead Reviewer, she was working out-of-title as a QAS. She believes that

the DoAS's failure to notify this agency that she working as a provisional for more than one year impeded this agency from having consistent QAS titles throughout the DoAS. S.R. indicates that her name was marked on the organizational map to be promoted; yet she was not promoted for another two years. She emphasizes that she did not know about classification review requests because she was never advised about them when she was first hired. S.R. states that she provided the investigator all this information for the 2023 investigation, but she was never asked about any of this. S.R. restates arguments concerning the 2022 QAC promotion and other arguments. She also describes the circumstances around a retaliation appeal to the Commission which she withdrew. S.R. presents that she withdrew her EEO retaliation appeal because she had a document which she was not sure if she should share, and she is not an attorney.

In further response, the appointing authority reiterates that the main issue is S.R. failed to apply to a job posting that was issued on January 12, 2022, which had a January 26, 2022, closing date. It emphasizes that she was notified of this posting before she went on leave in February 2022. Therefore, the appointing authority contends that S.R.'s statement that she was subjected to age discrimination when she did not have access to her State equipment on leave to prevent her from applying to this position is speculation.

In response to S.R.'s allegation that the appointing authority's investigation completed in January 2023 was not thorough because the DCR did not have a copy of the EEO's investigation, the appointing authority presents that investigation reports are confidential. Therefore, just because the confidential investigation was not forwarded to the DCR, does not signify that a thorough investigation was not completed. Regarding S.R.'s complaint that she was interviewed in-person by the investigator, it provides that the Merriam Webster Dictionary provides that one of the definitions of interview is a report or reproduction of information so obtained. Further, the appointing authority presents that there is more than one form for an interview, and the investigator conducted the interview in this matter by providing S.R. questions which she answered. Moreover, while S.R. claims that the DCR found age discrimination and retaliation, the appointing authority states this was not the case as the DCR closed its matter concluding that it was in the public interest not to proceed as it was unlikely to succeed on the merits after an investigation or hearing. Additionally, the appointing authority provides that the error in her personnel record was an administrative error discovered after a Commission decision, which has been corrected. It highlights that regarding S.R.'s provisional service from 2015 to 2017, the DoAS only had two options. It could have allowed her to continue in her provisional service or remove her, and it chose to keep her provisionally until her position could become permanent.

Referring to C.M., the appointing authority provides that S.R. discussed C.M.'s situation as an alleged example of discrimination. However, S.R. submitted an

affidavit from L.L. where L.L. stated that C.M. did not want the QAC-Quality Manager position. However, when C.M. realized that there was also a QAC-Clinical Management position, she “invoked the rule.” The appointing authority asserts that this is not a discrimination issue but an issue with Civil Service rules as the same certification was used for both positions. Therefore, C.M. had the right to “invoke the rule.” The appointing authority notes that C.M. invoked the rule after she applied and interviewed for the QAC position in January 2022, which S.R. did not do.

Finally, the appointing authority indicates that S.R. alleged that she was discriminated against when she was not notified of the February 2022 reposting while on FMLA leave. It presents that S.R. insisted that she was “set up” by L.M. and the DoAS since the DoAS allegedly orchestrated the posting of the QAC job while she was on FMLA leave and then took possession of her State equipment so that she could not apply. However, it notes that S.R. was already notified of the exact same position in January 2022 while she was not on FMLA leave and while she still had possession of her State equipment. Therefore, it argues that S.R. was not “set up” as she contends and had the same opportunity to apply in January 2022 as everyone else.

In an additional reply, S.R. again questions how there can be a thorough EEO investigation when she was not interviewed, and she contends that her civil rights were violated. Concerning the announcement in January 2022, she presents that her husband was going to have open heart surgery, and she was not monitoring her email closely. She claims that the appointing authority wants to penalize her because she was preoccupied with her husband. However, S.R. indicates that the announcement was reposted in February 2022, and this is where the appointments were made. S.R. emphasizes that her FMLA letter indicated that she would not be back from leave until April 2, 2022. She questions why the DoAS made an appointment while she was on leave. S.R. states that the appointing authority does not want to mention that she had no ability to apply while she was on leave. Further, she contends that the appointing authority does not mention that all the older employees were rejected from the QAC-Clinical Manager position. She states that the appointing authority in its response refuses to mention her alleged pattern of discrimination against her since 2016.

Moreover, S.R. highlights that her personnel record was changed after eight to 10 years, and she was not provided notice. She presents that she was working out-of-title since 2016, but she was not promoted to QAS until February 2022, which was two years after a younger employee was promoted. Therefore, she argues that this is age discrimination. She questions why the appointing authority never asked for a Civil Service test while she served provisionally for three years.

S.R. asserts that T.B. was promoted ahead of an older employee who was much more qualified and experienced than her. She claims that Civil Service rules were intentionally modified to accommodate a younger and less experienced employee.

S.R. contends that if C.M. had been awarded the QAC-Clinical Manager position in March 2022, which was the appropriate action, L.L. and S.R. could have applied for the QAC position in June 2022. She states that provisional appointments in March 2022 were not supposed to occur. Therefore, S.R. argues that the appointing authority violated Civil Service rules to promote younger employees over older employees as the DoAS was supposed to see if she was interested when she returned from leave. Instead, the DoAS selected a younger employee while she was on leave.

S.R. indicates that she reached out to the DCR because the EEO was not thoroughly investigating matters, and she stands by what the DCR told her. She notes that the determination letters did not list one fact favorable to her. Further, the mere fact that the EEO did not provide the DCR its investigation does not prove that its investigation was thorough. S.R. argues that she has provided overwhelming evidence. She states that she performed her own investigation because the EEO's investigation was insufficient. S.R. submits the questions and responses that she provided to the EEO investigator in January 2023. However, she indicates that she did not know that this would be her only communication with the investigator and she had other topics to cover but the written questions were limited and biased.

CONCLUSION

N.J.S.A. 11A:4-13(b) provides, in pertinent part, in no case shall any provisional appointment exceed a period of 12 months.

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, the State 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 age discrimination will not be tolerated.

N.J.A.C. 4A:7-3.2(n)1 provides that the burden of proof shall be on the appellant.

Initially, it is noted that S.R. previously filed an age discrimination appeal. In that case, *In the Matter of S.R.* (CSC, decided August 2, 2023), there was a footnote that indicated S.R. was appointed as a permanent RSN on July 11, 2015. Thereafter, she filed an appeal requesting a retroactive appointment and back pay based on this footnote. In its February 5, 2025, decision, the Commission denied this appeal as both being untimely and on the merits.

Based on the aforementioned footnote, S.R. also filed the subject age discrimination appeal. The complaint is as follows:

Was supposed to have had a permanent title of RSN in 7/11/15. Instead, Appointing Authority did not offer me the test for QAS in Sept. 2016. I just found my paperwork verifying I was not offered the appropriate test. In the Northern Regional Office, the Appointing Authority offered promotional QAC tests to 2 younger and less qualified employees. (2016, 2020) I was treated differently. This is Age Discrimination; [disparate] treatment.

Additionally, it is noted that this now the third appeal to the Commission regarding similar issues.⁴ S.R.'s submissions in this matter also addressed issues that are outside the scope of the complaint that she filed for the subject appeal. However, this decision will only address matters that were submitted in the subject complaint to the EEO. Moreover, during the current appeal, it was discovered that the footnote that is the foundation of her current age discrimination complaint, was based on an administrative error. Specifically, S.R.'s personnel record incorrectly indicated that she was permanently appointed as a RSN on July 11, 2015. However, it has been determined that S.R. was still serving provisionally as a RSN at that time, and she was not permanently appointed as RSN until April 3, 2107, after going through the open competitive examination procedures. It was also found that this mistake was made when her personnel record was updated regarding her AD on July 11, 2015, which should not have changed her appointment type to permanent at the time. Consequently, the DoAS appropriately did not advise S.R. to apply for a QAS promotional examination in 2016 because S.R. was not eligible. Specifically, the QAS (PS1180K) promotional examination announcement was open to employees who had one year of continuous permanent service and/or otherwise met the title and open competitive experience requirements by the September 21, 2016, examination closing. However, a review of corrected personnel records indicate that S.R. was provisionally serving as a RSN at that time and did not have any permanent service.

Concerning S.R.'s comments that her three years of provisional service as a RSN violated *N.J.S.A. 11A:4-13(b)*, it is true that she should not have served provisionally as a RSN for more than one year. However, while the DoAS could have alerted this agency so that a promotional examination for a permanent RSN position be announced, it is also equally true that the DoAS could have also discontinued her employment to comply with *N.J.S.A. 11A:4-13(b)*. Further, S.R. has not supplied a confirming witness, document, or other evidence that indicates the reason that DoAS did not advise this agency that S.R. was provisionally serving as a RSN for more than one year was based on her age. Therefore, DoAS's failure to alert this agency about S.R.'s long-term provisional service is not evidence of age discrimination as mere speculation, without evidence, is insufficient to support a State Policy violation. See *In the Matter of T.J.* (CSC, decided December 7, 2016).

⁴ S.R. also filed a fourth appeal in this regard, which she withdrew.

Moreover, even if the DoAS's lack of action regarding S.R.'s provisional appointment was an administrative error, as indicated in the Commission's February 5, 2025, decision, S.R. was not automatically entitled to be permanently appointed as a RSN as an individual whose names merely appears on a list does not have a vested right to appointment. See *In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). In other words, even if RSN had been reachable for appointment on a RSN promotional eligible list around July 11, 2015, the DoAS could have bypassed her under the Rule of Three. See N.J.A.C. 4A:4-4.8(a)3. Therefore, there is no basis to provide S.R. any remedy.

Similarly, concerning the appointment of a younger employee as a QAC in 2020, the record indicates that a QAC promotional examination (PS4578K) was announced with a July 23, 2018, closing date. The (PS4578K) announcement was open to employees with one year of continuous permanent service as QAS or who met the open competitive examination requirements by the closing date. Agency records indicate that S.R. did not apply. As such, there is no basis to find that S.R.'s non-appointment in this regard was based on age discrimination.⁵

One overall issue needs to be addressed. It is the general theme of S.R.'s appeals that because younger employees were promoted instead of her, she has been discriminated against. She believes that she is more qualified than those appointed based on either her overall number of years of employment and/or her service in specific titles or performing specific duties. However, it is noted, that if an employee meets the eligibility criteria for a Civil Service examination, that employee is considered qualified under Civil Service law and rules, and it is only S.R.'s opinion that she is "more qualified." If the only consideration for an appointment was number of years of service, there would be no need for Civil Service examinations and appointments would be automatic. However, under the Rule of Three, an appointing authority has the authority to appoint any reachable candidate based on its

⁵ In reviewing *In the Matter of S.R.* (CSC, decided August 2, 2023), S.R. claimed that it was "unfair" that she was not emailed this announcement. However, as S.R. was not serving in the in-line title that the examination was open to, QAS, she was not entitled to be personally notified. Instead, the record indicated that it was posted on a bulletin board, which was the form of notification at that time. Despite S.R.'s voluminous submissions in this matter, other than a claim that the DoAS did not post the announcement on a bulletin board as the DoAS claims, it does not appear that she addressed her failure to apply for the PS4578K promotional examination in this matter. Regardless, as this issue was already decided in the August 2023 decision and it well past the time of reconsideration, any new claims in this matter in this regard cannot be considered. Further, it was S.R.'s duty to understand Civil Service rules and processes and monitor the bulletin boards for any promotional opportunities that she was interested in at that time. Moreover, any argument that she was not personally advised regarding these processes is unpersuasive. It is also noted that issue was decided in 2023, and it was well past the time for reconsideration.

determination who best fills the needs of that position even if that employee is younger or has less years of experience. Such an appointment would only be a violation of Civil Service law and rules if there was confirming evidence that age or some other discriminatory, illegal or invidious motivation was the reason for the appointment.

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 30TH DAY OF APRIL, 2025



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