

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

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

CSC Docket No. 2016-3607

Discrimination Appeal

ISSUED: **NOV 28 2016** (SLK)

S.E., a Cottage Training Technician, Department of Human Services, Green Brook Regional Center (GBRC), represented by Matthew T. Clark, Esq., appeals the decision of the Assistant Commissioner, Human Resources, which found that the appellant did not present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the appellant dually filed discrimination complaints with the New Jersey Division of Civil Rights (NJDCR) and with the United States Equal Employment Opportunity Commission (EEOC) claiming that the appointing authority denied her a reasonable accommodation for religious observance. Specifically, on or about October 29, 2015, the GBRC notified the appellant that her religious accommodation of having Fridays and Saturdays off for religious observance would end on November 13, 2015 due to fiscal issues and operational effectiveness. However, the GBRC informed her that, under the collective bargaining agreement, she could apply to use vacation or administrative days or swap shifts with another employee who was willing subject to supervisor approval. Thereafter, on January 11, 2016, the appellant attempted to discuss her need for a religious accommodation with her supervisor, P.M., a Supervisor of Professional Residential Services, and alleged that P.M. responded by stating that she should "go work at Wal-Mart" if she "wanted to take time off." The Equal Employment Opportunity office (EEO) investigated the matter, which involved interviewing two employees and reviewing over 25 documents. The investigation resulted in the appellant's allegation not being substantiated and a determination that the appointing authority did not violate the State Policy.

On appeal, the appellant contends that P.M.'s alleged statement exhibits an unquestionable clear bias toward her and her religious beliefs by equating addressing a religious accommodation as little more than an attempt to "take time off." She requests that the appointing authority be found to have violated the State Policy and her religious accommodation be reinstated.

In reply, the EEO states that the appellant did not bring up P.M.'s alleged statements when she was interviewed on March 4, 2016 and therefore this allegation was not investigated. It presents that the investigation revealed that the GBRC identified issues of unequal staffing patterns and excessive overtime and sought to balance the staffing schedules by seniority and reduce overtime. Therefore, the GBRC and unions developed a balanced schedule and enabled staff members to choose their schedules based on seniority. As such, most senior staff members chose to have Friday and Saturday or Sunday and Monday as their off days. Accordingly, it notified the appellant that her religious accommodation to have Friday and Saturdays off for religious observance could no longer be provided. However, under the union contract, she could use time off or swap with shifts with willing employees subject to supervisor approval. Additionally, it states that she was allowed to swap with a morning shift employee to work the Saturday morning shift, starting on March 5, 2016, and the employee would work her Saturday evening shift. On the morning shift, she would have every other Saturday off, and when she has to work on Saturday, she could swap shifts with the evening shift employee who agreed to help her when she could. However, it indicates that the appellant complained that her having to report to work on Saturday at 3:00 p.m. before the Sabbath ends at sundown, left her accommodation unresolved. The appointing authority contends that she is not entitled to have her previous religious accommodation reinstated since she does not have the most seniority on her shift. Furthermore, it asserts that if it granted her request to have every Friday and Saturday off as a reasonable accommodation, this would impose an undue hardship to the GBRC since this would violate the rights of more senior employees under the collective bargaining agreement.

## 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 with a work environment free from employment discrimination based upon religion.

*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, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Commission has conducted a review of the record and finds that the appellant has not established that the appointing authority violated the State Policy. During the course of the investigation, the EEO interviewed two witnesses and reviewed twenty-five documents. The investigation revealed that the GBRC was having issues with unbalanced staff schedules and overtime issues and therefore worked with the union to develop a collectively bargained agreement where staffing schedules were based on seniority. Further, since most of the staff who had greater seniority than the appellant chose to take weekends off, the appellant was advised that her request to have Fridays and Saturdays off due to her religious observance could no longer be accommodated. Moreover, it explains that if the appellant's request was to be accommodated, it would be an "undue hardship" as this would violate the rights of more senior staff members under the new collectively bargained agreement. Additionally, the appellant was advised that, under the union contract, she could use vacation and administrative leave time and switch shifts with willing employees subject to supervisory approval in order to limit the amount of time she would work during the Sabbath. Further, she was allowed to switch a shift with a specific employee which would enable her to have every other Saturday off and then, on the Saturdays when she was required to work, she could work the Saturday night shift. Although this accommodation did not fully meet her needs, it is clear that the appointing authority is making reasonable attempts to provide the requested accommodation. Therefore, since the investigation revealed that there were legitimate business reasons for changing its scheduling policy and that providing her an accommodation to not work on all Fridays and Saturdays would violate the seniority rights of other employees under the union contract, the appellant's allegation that the appointing authority's actions violate the State Policy cannot be substantiated. It is also noted that if the appellant is complaining that the terms of the union contract itself violate her rights for a religious accommodation, the Commission does not have jurisdiction to enforce or interpret grievance procedures or other items which are contained in a collective bargaining agreement negotiated between the employer and the majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is the Public Employment Relations Committee. *See N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-5.4(c)*.

With respect to the appellant's claim that her supervisor, P.M., violated the State Policy based on her statements in response to her request for a religious accommodation, the appellant did not bring up this allegation at the time the EEO interviewed her and therefore was not investigated. As such, this allegation cannot be considered in this appeal. However, if the appellant so chooses, she may file a new complaint with the EEO in order to provide it with the opportunity to investigate this matter.

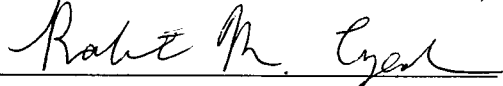
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 23<sup>rd</sup> DAY OF NOVEMBER, 2016



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