

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of M.O., Trenton
Psychiatric Hospital

CSC Docket No. 2016-3793

Discrimination Appeal

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

M.O., an applicant with Trenton Psychiatric Hospital for the position of Temporary Employment Services/Human Services Assistant (TES/HSA), appeals the decision of the Department of Human Services' Assistant Commissioner, Human Resources, which found that the appellant did not present sufficient evidence to support a finding that he 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 filed a complaint alleging that he was denied employment due to his disability. Specifically, on September 18, 2013, the appointing authority presented the appellant with a conditional offer of employment subject to, but not limited to, verification of employment and personal references and a health screening. However, on October 28, 2013, the appointing authority withdrew its conditional employment offer after a physician determined that his medical examination was unsuccessful, he only returned one out of two personal references requested, and he only returned one out of three employer references requested. After the appellant filed the discrimination complaint, the appointing authority's Office of Equal Employment Opportunity (EEO) conducted an investigation which consisted of 4 interviews and reviewing 28 relevant documents. The investigation could not substantiate a violation of the State Policy.

On appeal, the appellant asserts that he should not have failed his pre-employment processing. He submits a document to show that he had a medical examination in August 2011 which indicated the he had a health condition. Further, he attaches his employment badge to demonstrate that he was employed by the New Lisbon Developmental Center in 2012 as a TES/HSA even though he had a medical condition. He attaches a document that shows he was admitted to

the hospital in October 2012. He submits a list of medications he has taken. He presents the appointing authority's doctor's report, dated September 20, 2013, which indicates that the appellant may have a medical condition. He attaches the appointing authority's October 28, 2013 letter which rescinded his employment offer.

He also submits a letter from his doctor, dated December 3, 2013, which states that on October 30, 2012, a scan discovered that the appellant had a medical condition and he took medication as prescribed until July 2013 for this condition. Thereafter, on November 14, 2013, he had a follow up scan which indicated that his condition was stable and his doctor advised that he should be considered non-infectious and ready to start work.

He attaches his August 19, 2014 statement to the EEO Investigator. The appellant stated that after an x-ray that was part of his physical, the appointing authority's doctor asked him when was the last time he was admitted to the hospital. He explained that he was admitted in 2012 for a medical condition. He claims that the appointing authority's doctor then said that if he could provide a statement from his doctor that would clear him to work, then she would pass him. However, even though he responded that he could provide such a statement, the doctor later replied that she could not pass him due to his condition since the patients are sometimes aggressive and fight and punch the staff. He then stated that he had already been cleared before to work in the same position in a previous job; however, the doctor replied that she did not care and she was not going to pass him. He then maintains that he later retrieved his medical records and handed them directly to the doctor who then said she would pass him; however, she never did.

Although provided the opportunity, the appointing authority did not submit any additional information or argument for the Commission to review.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as disability, is prohibited and will not be tolerated. Moreover, *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 in this matter and finds that the appellant has not established that he has been subjected to a violation of the State Policy. The appellant's pre-employment physical could not exclude pneumonia or neoplastic process. Further, the appellant stated to the Investigator that he advised the appointing authority's doctor that he had a medical

condition and the doctor responded that she was not going to pass him since the patients at the hospital were sometimes aggressive including fighting and punching the staff. In other words, the appointing authority had legitimate non-discriminatory reasons for not hiring appellant since pneumonia can be both contagious and non-contagious. The mere fact that the appellant previously served in the same title for a different appointing authority while having a medical condition does not mean that the appointing authority did not have legitimate concerns about employing him for the subject position. Further, the appellant's doctor only advised that his medical condition was stable and he was non-infectious and ready to start work based on an examination which took place after the appointing authority rescinded its conditional employment offer. Moreover, and equally important, the appellant failed to provide all of the requested personal and employer references which provided additional non-discriminatory reasons to reject his application.

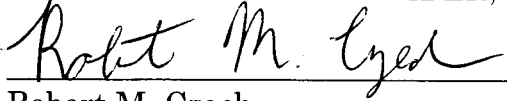
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 23rd DAY OF NOVEMBER, 2016



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