



STATE OF NEW JERSEY

In the Matter of D.B.,
Department of Law and Public Safety

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

CSC Docket No. 2017-3776

Discrimination Appeal

ISSUED: APRIL 6, 2018 (JET)

D.B., a Sergeant with the State Police (State Police), Department of Law and Public Safety, appeals the determination of the Executive Assistant Attorney General, which found that the appellant failed 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).

D.B., an African American, filed a complaint with the Office of Equal Employment Opportunity (EEO) alleging that R.S., an Hispanic Sergeant First Class, and C.E., a Caucasian Lieutenant, discriminated against him on the basis of race in violation of the State Policy. Specifically, the appellant alleged that he should have scored a higher rating on his 2015 employee evaluation. He also alleged that certain non-minority employees scored better on their 2015 employee evaluations than certain minority employees including himself. Further, he contended that he was denied training opportunities that were available to other employees. Specifically, the appellant alleged that non-minority personnel were permitted to attend training during work hours while he was required to attend training on his own time. The EEO conducted an investigation, including interviewing witnesses and reviewing relevant documentation, and determined that the allegations were not substantiated. Specifically, the EEO determination indicated that the 2015 employee evaluations issued by C.E. and R.S. revealed that several minority personnel rated higher than non-minority personnel. The EEO determination also indicated that the witnesses confirmed that both minority and non-minority personnel were authorized to attend training on their own time if it was not directly related to their job.

On appeal, the appellant maintains that his 2015 employee evaluation was unfair especially when compared to Sergeant S.K.'s employee evaluation. Specifically, the appellant argues that he was rated lower than S.K. due to his race. The appellant asserts that his employee evaluation was lower than S.K.'s despite that S.K. was issued a written reprimand by his supervisor. He adds that G.C., an African American Sergeant, received a lower employee evaluation due to his race. In addition, the appellant explains that, at the time the 2015 employee evaluation was completed, R.S. was unaware that the appellant volunteered for Pope detail and served in an undercover capacity during the riots in Baltimore. Further, the appellant contends that no one cared that he, a "black" Sergeant, was wronged and therefore, was forced to make his claim about race.¹ The appellant adds that, had his employee evaluation been rated higher, he would have been considered for a promotion to Sergeant First Class. In addition, the appellant states that the EEO's determination did not properly address his complaints, but rather, was designed to protect C.E., R.S. and the appointing authority. Moreover, the appellant asserts that J.C., a Sergeant First Class, was not interviewed at the time of the investigation, and as such, he requests the EEO to interview J.C. as he can confirm that S.K. received training that was not provided to other employees in his unit.

In response, the appointing authority, represented by Julie Cavanagh-Eghert, Deputy Attorney General, maintains that the appellant's appeal should be denied. The appointing authority states that, other than the appellant's assertions, there was no evidence to support his claims that he was discriminated against on the basis of race. Specifically, it asserts that the appellant's 2015 employment evaluation was completed by R.S. and reviewed by C.E. In this regard, C.E. stated at the time of the interview that he was assigned to review the 2015 employee evaluations for the appellant and other employees.² C.E. stated that, although R.S. was the appellant's immediate supervisor and completed the narrative portion of the employee evaluations, C.E. actually completed the employee ratings based on what R.S. told him. C.E. added that he believed the appellant's employee evaluation was fair and he denied that the appellant's race was considered at the time he completed the employee evaluation. In addition, R.S. confirmed that he completed the narrative portion of the 2015 employee evaluations for the appellant and three other Sergeants.³ R.S. explained that the appellant's employee evaluation had multiple above average and exceptional ratings and he was

¹ The appellant states that he did not initially want to file an EEO complaint which has resulted in little to no resolution of his concerns.

² The appellant's prior supervisor, A.G., an African American Lieutenant, was on sick leave and C.E. was assigned to review the appellant's employee evaluation in A.G.'s absence.

³ R.S. added that, prior to completing the employee evaluation, he contacted the appellant's prior supervisor for feedback pertaining to the appellant's past performance. R.S. also contacted the prior supervisors for the other three Sergeants. He explained that he completed an employee evaluation for an African American Sergeant who rated higher than S.K. in 2016, and for an African American Sergeant who rated higher than the appellant in 2015.

recommended for a promotion. R.S. denied that the appellant's race had anything to do with the employee evaluation. Moreover, R.S. and C.E. confirmed that, as a result of the staffing needs of the agency, employees attended training on their own time rather than during work hours. R.S. confirmed that the appellant did not fill out a special report⁴ to attend training which the appellant acknowledged by saying, "you have a point." C.E. confirmed that the appointing authority did not authorize training during work hours since it did not want to pay additional overtime for such trainings. Further, the appointing authority contends that the appellant did not name J.C. in his initial EEO complaint.⁵ Moreover, the EEO asserts that it interviewed the appellant's prior supervisor, A.G., S.K.⁶ and G.C., and none of them confirmed the appellant's allegations.

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.

The Commission has conducted a review of the record in this matter and finds that the appellant has not established that any of the named individuals discriminated against him in violation of the State Policy. The record shows that the EEO conducted an adequate investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. Specifically, the EEO concluded that the appellant was not discriminated against on the basis of race regarding the issuance of his 2015 employee evaluation. In this regard, the appellant did not provide any substantive evidence to show that C.E. and R.S. specifically lowered his score due to his race. Rather, the witnesses confirmed that the appellant's employee evaluation was justified based on his performance. Further, there is no substantive information to show that the appellant's 2015 employee evaluation warranted a higher rating

⁴ R.S. noted that three employees filled out special reports to attend training. The EEO also confirmed that G.C. attended training on his own time and he did not perceive that authorization for training was based on his race.

⁵ It further contends that, even if J.C. was mentioned in the appellant's EEO complaint, such information would not have changed the outcome of the investigation as J.C. was not the appellant's supervisor and had no involvement with the 2015 employee evaluation.

⁶ S.K. confirmed that he did not think that his race was considered at the time his employee evaluation was issued. S.K. stated his 2015 employee evaluation was lower than his 2014 employee evaluation. He also stated that employees only take training courses that directly apply to their positions and it would not be approved otherwise.

based on his performance. The 2015 employee evaluation, in and of itself, is not sufficient to substantiate that the appellant was discriminated against. With respect to S.K.'s higher employee rating, the witnesses confirmed that S.K.'s employee evaluation was fair based on his performance. Additionally, both minority and non-minority employees were interviewed by the EEO and they confirmed that they did not believe race was considered at the time the 2015 employee evaluations were issued. With respect to the appellant's arguments that he was denied training opportunities, he has not provided any substantive evidence in support of that claim. The witnesses confirmed that training opportunities were completed on their own time as a result of staffing issues and the record reflects that the appellant did not complete a special report for training opportunities. As such, the appellant did not provide a nexus to show that he was discriminated against on the basis of race in regard to the rating on his 2015 employee evaluation and the training opportunities available to him. Moreover, he has not provided any evidence to show that his promotional opportunities were jeopardized as a result of his 2015 employee evaluation, and if so, that race was the determining factor. As such, there is not a scintilla of evidence to show that he was discriminated against on the basis of race.

Regarding the appellant's request to interview J.C., he does not dispute that J.C. was not named in his initial complaint. As such, he cannot now request that J.C. be interviewed. The Commission is satisfied that the EEO interviewed a sufficient number of witnesses in furtherance of the appellant's complaint and properly concluded that there was no violation of the State Policy. Moreover, the information the appellant claims that J.C. could provide in furtherance of his appeal would not necessarily substantiate his claims in this matter or change the outcome of the case.

Accordingly, the EEO's investigation was thorough and impartial, and therefore, 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 4th DAY OF APRIL, 2018



Deidre L. Webster Cobb
Acting Chairperson
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