



STATE OF NEW JERSEY

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

In the Matter of K.B., Department of
Military and Veterans Affairs

Discrimination Appeal

CSC Docket No. 2017-3156

ISSUED: APRIL 10, 2018 (ABR)

K.B., a Family Service Specialist Trainee with the Department of Children and Families, appeals the determination of the Deputy Commissioner, Department of Military and Veterans Affairs (DMAVA), 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, on May 16, 2016, the appellant, an African-American, who was 60 years old at the time, filed a complaint with the DMAVA’s Division of Equal Employment Opportunity and Affirmative Action (EEO/AA), alleging that V.R., a Caucasian Division Director with the New Jersey Youth Challenge Academy (Academy), DMAVA; M.S., an African-American Special Staff Officer 1 with the Academy; and H.K., a Caucasian Personnel Assistant 4 with the DMAVA, discriminated against him on the basis of age, race and disability. The appellant had applied for the non-competitive title of Youth Worker with the Academy and was interviewed for the subject position on March 28, 2016. The appellant claimed that V.R., M.S. and H.K. were involved in interviewing and selecting candidates for appointment to the title of Youth Worker at the Academy and he maintained that he was not appointed to the subject title because of his age, race and disability. In response, the EEO/AA conducted an investigation, during which it reviewed pertinent documents and conducted interviews.

During his interview with the EEO/AA, the appellant stated that he believed he was not appointed to the subject title because of his age, race and disability, as

he had not been given any information about the persons appointed to the subject title. However, he indicated that he believed the pre-employment interview was conducted in a professional and courteous manner, and that no references to age, race or disability were made. He also proffered that he did not feel that the interviewers disrespected him in any way during the pre-employment interview.

The EEO/AA investigation revealed that V.R. and M.S. were the individuals who interviewed the appellant. However, the EEO/AA found that the pre-employment interview process was conducted in the same manner for all candidates being considered. All candidates were asked the same questions by the interviewers and were numerically ranked according to the “quality” of the answers provided by the candidate. Based upon the interview process, V.R. and M.S. found that other candidates were a better fit for the Academy. With regard to H.K., the EEO/AA found that while she was named as the DMAVA contact on official correspondence, she did not play a role in interviewing the appellant and did not have any input in selecting candidates for appointment to the subject title. Therefore, based upon the foregoing, the EEO/AA did not substantiate any State Policy violations by V.R., M.S. or H.K.

On appeal, the appellant argues that the appointing authority discriminated against him when it chose not to appoint him to the subject title. He indicates that he has a “70% disability” connected with military service.¹ He states that while he does not “suggest in any way that [he] was the only qualified candidate for [the] position,” he believes that he should have been appointed to one of the vacancies he applied for based upon his military background and his education, which includes an Associate’s degree in Human Services and a Bachelor’s degree in Behavioral Science. He requests the names, races, ages and qualifications of the eligibles appointed to the subject title from the above-noted hiring process because he maintains that he needs the information in order to prove that there was discrimination in the subject hiring process.

In response, the EEO/AA argues that it conducted a thorough investigation and that its investigation failed to reveal any evidence of discriminatory animus. It maintains that the appellant is not entitled to the names, races, ages and qualifications of the eligibles appointed.² The EEO/AA emphasizes that the appellant stated during his EEO/AA interview that his pre-employment interview was conducted in a professional and courteous manner and it did not reference his age, race or disability. Additionally, the EEO/AA notes that a diverse array of 34

¹ Agency records indicate that although the appellant applied for Veterans’ Preference, he was found to have not met the requirements for Veterans Preference in accordance with *N.J.S.A. 11A:5-1, et seq.*, *N.J.A.C. 4A:5-1.3* and *N.J.A.C. 5A:9-1.4*.

² Unlike an individual’s name, title, salary, compensation, dates of government service and reason for separation, an individual’s age and race are not considered public records under Civil Service rules. *See N.J.A.C. 4A:1-2.2(a)*.

candidates were considered for the subject title and went through an interview process conducted in exactly the same manner as that of the appellant's interview. Moreover, the EEO/AA submits that following the interview process, the DMAVA appointed several individuals, including African-Americans, Caucasians and individuals of Egyptian descent.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include 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. *See N.J.A.C. 4A:7-3.1(a)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. The appellant has the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. The appellant does not dispute the EEO/AA's claims that he considered the pre-employment interview to have been conducted in a professional and courteous manner and that no reference was made with regard to his age, race and/or disability during the interview. Moreover, other than his speculation, the appellant has not provided any evidence that he was not appointed because of his age, race and/or disability. Without evidence, his speculation is insufficient to substantiate a violation of the State Policy. *See In the Matter of H.F.* (CSC, decided April 19, 2017); *In the Matter of T.J.* (CSC, decided December 7, 2016). Accordingly, the Commission finds that the EEO/AA's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and there is no basis to disturb the determination of the Deputy Commissioner, DMAVA.

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

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