



STATE OF NEW JERSEY

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

In the Matter of S.H., Department of
Law and Public Safety

CSC Docket No. 2017-2473

Discrimination Appeal

ISSUED: April 9, 2018 (SLD)

S.H., an applicant for the unclassified title of State Trooper with the Division of State Police, Department of Law and Public Safety (LPS), appeals the determination of the Executive Assistant Attorney General, which found that the appellant failed to 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).

The appellant filed a complaint with the Office of Equal Employment Opportunity (EEO) alleging that he was discriminated against during the 156th New Jersey State Police Recruit Class Selection Process because of his age, in violation of the State Policy. Specifically, the appellant alleged that T.S., a Lieutenant, questioned him as to why he wanted to be a State Trooper and noted that the appellant would not be able to attain 25 years with the State Police, but he still had a viable career where he was employed. The appellant also asserted that T.S. stated during a class that age was considered during the application process. Finally, the appellant alleged that his veteran's preference was not honored during the selection process.

In response to the complaint, the EEO conducted an investigation and determined that, the appellant's age was not a factor in his disqualification from the selection process. Rather, it found that there was a non-discriminatory basis for his disqualification. Namely, the appellant's failure to report all domestic violence incidents he was involved in and his financial difficulties. Additionally, the EEO noted that T.S. had no role in the decision to disqualify him as he was merely

tasked with communicating the decision to the appellant. The EEO also noted that although T.S. acknowledged asking the appellant why he wanted to leave his current employment, despite the number of years in the pension system, he indicated his intent was to demonstrate to the appellant he had a viable career with his current agency. Moreover, the EEO found that T.S. was unaware of his military time and simply stated a fact that the appellant would be unable to obtain 25 years in the pension system due to his then age.

With regard to the appellant's allegation that his veteran's preference was not honored, the EEO determined that veteran's preference is only taken into account after both the physical qualification test and written test are passed. At that point, all applicants who claimed veteran's preference, including the appellant, were moved onto the background investigation phase.

On appeal, the appellant reiterates all of his allegations. The appellant also argues that despite the EEO's assertion, he was not disqualified after the background investigation as he proceeded to the medical background stage. Moreover, he notes that he was told to appear for the Pre-Employment Preparation Program (PEPP), which was only done after a conditional offer of employment was made. Additionally, the appellant argues that he provided all information regarding the domestic violence incidents, including the fact that they were all false reports in an attempt to abuse/coerce him by the complaining individual. Moreover, he argues that as he was never found guilty of domestic violence, such incidents cannot disqualify him from the selection process. The appellant also maintains that he provided all information regarding his financial difficulties, which stemmed from the false domestic violence allegations.

With regard to his allegations concerning T.S., the appellant disputes the EEO's conclusion that he was not responsible for the decision to disqualify him. Specifically, he asserts that T.S. was the "Commanding Officer" of the selection processing unit and thus, it was his decision to disqualify him on the basis of his age. Moreover, the appellant asserts that he explained to T.S. that his current employment was not a viable career due to the "restricted and limited police powers." He also asserts that he advised T.S. that, with his military service, he would be able to obtain 25 years in the pension system. The appellant also argues that T.S.'s statement during the PEPP class that it was the last opportunity for an individual who was currently 34 years of age to be hired as a Trooper, was clear evidence of age discrimination. The appellant maintains that he has been subject to embarrassment and defamation of his character by his disqualification due to his age, as he is a highly regard Police Sergeant in his jurisdiction and "everyone" strongly believed he was a highly qualified candidate.

In response, the EEO reiterates that its investigation did not substantiate the appellant's allegations. It explains that after the appellant advanced to the

background investigation phase he received an e-mail advising him that a PEPP class would be offered to assist in preparing applicants for the rigors of the academy. The e-mail specified that the class was only open to applicants who had already received a conditional offer of employment. However, although the appellant had not received a conditional offer of employment, he still attended the PEPP class. After one of the presentations, the appellant and six other individuals were taken aside and informed they were not permitted to participate in the remainder of the sessions as they either did not have a medical screening or were disqualified from the process. Thereafter, the appellant was taken to a private meeting where he was provided with a letter informing him that he had been disqualified because of his background investigation. T.S. confirmed that it was due to his involvement in the domestic violence incidents. The EEO asserts that its investigation revealed that although T.S. was the unit head of the selection processing unit, he was not involved in the disqualification of the appellant. Rather, it was the investigator assigned to review the appellant's background who recommended his disqualification, and the Background Investigation Review Committee which agreed. It was determined upon review of the appellant's background that his involvement in the several domestic violence incidents, his failure to indicate several of the domestic violence incidents, and his financial issues were significant factors in the decision to disqualify him. Finally, with regard to T.S.'s statement to another individual about "aging out," the EEO notes that the selection process unit does conduct an "age out analysis" as it is required that applicants must not reach his or her 35th birthday prior to his or her completion of the academy.

CONCLUSION

The Civil Service Commission (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 due to his age in violation of the State Policy. The EEO appropriately analyzed the available documents and interviewed the witnesses in investigating the appellant's complaints and concluded that there was no violation of the State Policy.

The appellant argues that the EEO's investigation was not sufficient since it incorrectly found that he had been disqualified for a non-discriminatory reason. Initially, it is noted that as the position of State Trooper is an unclassified title, the Commission does not have jurisdiction to review the appointing authority's selection process or the substantive issue as to the appropriateness of the appellant's disqualification for the reasons presented, *i.e.*, the domestic violence incidents and financial history. However, it must be noted that for a career service law enforcement title, a history of domestic violence incidents may be considered. *See e.g., N.J.A.C. 4A:4-4.7* for examples of reasons for disqualification from appointment

for career service law enforcement and other titles. Moreover, other than his mere assertions, he presents no evidence that his disqualification was due to his age. The fact that he was nearing the cutoff age for employment as a Trooper or that his age was brought up during the process does not establish in any way that his non-selection was based on his age in violation of the State Policy. Accordingly, the investigation was thorough and impartial 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 DAY OF , 2018



Deirdré L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: S.H.
Andrew J. Sarrol, DAG
Mamta Patel
Kelly Glenn