



**STATE OF NEW JERSEY**

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

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

CSC Docket No. 2017-1545

Discrimination Appeal

**ISSUED:** April 6, 2018 (WR)

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S.S., a Software Development Specialist 2 with the Department of Human Services, appeals the determination of the Assistant Commissioner, stating 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, an African-American, filed a discrimination complaint against R.T., P.D. and J.A.<sup>1</sup> alleging that, on the account of his race, he was denied a promotion to the title of Administrative Analyst 4, Information Systems (PS1773K), Division of Family Development. By way of background, the PS1773K eligible list promulgated on July 10, 2014 and expired on July 9, 2016. A certification PS141100 was issued on August 8, 2014 and disposed of on July 9, 2015. The second-ranked eligible E.E., an Asian-American, was appointed, effective April 18, 2015. It is noted that the appellant ranked fourth.<sup>2</sup>

In response to the appellant’s complaint, the Office of Equal Employment Opportunity (EEO) conducted an investigation, which included two interviews and

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<sup>1</sup> R.T., a Caucasian and former Assistant Division Director left State service, effective May 3, 2016. P.D., a Caucasian and former Manager 2, Information Processing, left State service, effective July 13, 2016. J.A., an African-American and former Manager 1, Information Processing, left State service, effective March 7, 2017.

<sup>2</sup> Subsequent to the filing of the appellant’s complaint, a second certification PS160381 was issued on June 21, 2016. In that certification, the first-ranked eligible, W.C., a Caucasian, was removed, the second and third ranked eligibles, A.N. an Asian-American and the appellant, respectively, were bypassed and the fourth ranked eligible, a Caucasian was appointed, effective June 11, 2016.

the review of seven relevant documents. It determined that E.E., and Caucasian employees C.J. and M.M. were provisionally appointed to the title of Administrative Analyst 4, Information Systems, effective July 27, 2013, August 27, 2011, and February 22, 2014, respectively.<sup>3</sup> Upon promulgation of the subject eligible list, the appointing authority appointed E.E. to the subject position permanently and returned M.M. to her permanent position of Administrative Analyst 2, Data Processing position and C.J. to her permanent position of a Software Development Specialist 2 position, effective June 27, 2015. Therefore, the EEO did not substantiate the appellant's claim of discrimination because it was management's discretion not to make any further appointments from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant complains that the EEO's determination was "generic" and did not address his complaint. He also complains that management did not appoint him to fill one of the two vacated promotional positions held by M.M. and C.J., despite the fact that he possessed the necessary requirements for the promotion and he expressed his desire for the appointment. Thus, the appellant "invokes the rule" to displace one of the two provisionals. The appellant also mentions that his supervisor has recommended that he be promoted, and he possesses a Master's degree and he has performed his work satisfactorily. Accordingly, the appellant alleges that the only reason he was not promoted was because of his race. He also contends that lesser qualified Caucasian candidates were promoted over him. In this regard, he asserts that A.B. and C.W., both Caucasian employees currently serving in the title of Software Development Specialist 3, were given provisional promotions when they were not on a promotional list.<sup>4</sup> The appellant also claims that he was previously passed over for a promotion on the "Software Development Specialist 3 (PS1806K)" eligible list in 2013.<sup>5</sup> He further contends that he had not been interviewed for a provisional appointment in more than 12 years. He contends that he is only interviewed after he has passed an examination and is reachable on an eligible list and the appointing authority only interviews him to discourage him from accepting provisional appointments. The appellant states that he does not believe Caucasian employees face similar treatment. Nevertheless, the appellant also claims that his previous supervisor, J.A., told him that he may not have been promoted because he previously filed a grievance regarding his workplace location with his union, challenging his work location. The appellant also alleges that J.A. called him and

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<sup>3</sup> Agency records indicate that E.E. was admitted to the examination, but C.J. and M.M. were deemed ineligible.

<sup>4</sup> Agency records indicate that A.B. was provisionally appointed to the title of Software Development Specialist 3 pending promotional examination procedures, effective December 15, 2012. She received a regular appointment to that title, effective February 8, 2014. C.W. was provisionally appointed to the title of Administrative Analyst 1, Data Processing provisionally pending promotional examination procedures, effective June 18, 2011.

<sup>5</sup> The PS1806K eligible list promulgated on September 12, 2013 and expired on September 11, 2015. One certification was issued on September 30, 2013, from which the first and second ranked eligibles, A.B. and C.W., were appointed effective February 8, 2014.

others “no good.” As a remedy, the appellant requests that he be promoted to a title in salary range 29.

The EEO in response states that the investigation found that the appointing authority chose to appoint one provisional from the list for the Administrative Analyst 4, Information Systems and exercise its prerogative to not fill the other two positions at that level, but rather at a lower level. Thus, E.E. was permanently appointed to the title of Administrative Analyst 4, Information Systems and M.M. and C.J. were returned to their permanent titles. Moreover, it indicates that the investigation determined that J.A. was not involved in the selection process for the subject title.

Regarding the appellant’s assertion that he was not promoted to Software Development Specialist 3 in 2013, the appointing authority states that during his interview, the appellant stated that he did not believe his non-appointment to that title was due to discrimination. Rather, he said that it demonstrated how management circumvents the rules to deny him a promotion.<sup>6</sup> Accordingly, the EEO argues that the appellant has failed to meet his burden of proof in this matter and his appeal should be denied.

## 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. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)3.

The Commission has conducted a review of the record and finds that an adequate investigation was conducted. The investigation did not reveal that the appellant’s non-appointment to the subject position was motivated by race. Rather, the investigation determined that the PS141100 certification was disposed of in accordance with the appointing authority’s operational needs. In its review of the record, the Commission finds that that the PS141100 certification was properly disposed of pursuant to *N.J.A.C.* 4A:4-4.8. As provisionals, C.J. and M.M. were properly returned to their permanent positions since they did not receive an appointment from the certification. Therefore, the appointing authority was not

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<sup>6</sup> It is noted that, despite the opportunity, the appellant does not dispute the appointing authority’s account that he made this statement.

required to make any additional permanent appointments from the subject eligible list. Additionally, because the eligible list was complete, the appellant's reliance on *N.J.A.C.* 4A:4-4.8 to displace an incumbent provisional is misplaced.<sup>7</sup> It is also noted that the appellant was not bypassed on this certification.

On appeal, the appellant has presented no evidence whatsoever that his non-appointment was due to his race. Rather, the appellant merely contends that he was qualified and thus, he was not appointed solely due to his race. However, individuals whose names merely appear on a list do not have a vested right to appointment. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Therefore, the appellant has failed to meet his burden of proof in this matter. *See N.J.A.C.* 4A:7-3.2(m)3. Accordingly, under these circumstances, no basis exists to find a violation of the State Policy.

### 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 4<sup>th</sup> DAY OF APRIL, 2018



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<sup>7</sup> As the list was complete, the appointing authority could not appoint or retain anyone in the title of Administrative Analyst 4, Information Systems provisionally. *See N.J.A.C.* 4A:4-1.5.

c. S.S.  
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