

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of D.C-W.

CSC Docket No. 2018-304

Discrimination Appeal

ISSUED: APRIL 9, 2018 (SLK)

D.C-W., an Institutional Technician Secured Facilities with the Department of Corrections (Corrections), appeals the decision of the Deputy Chief Executive Officer (Deputy CEO), Civil Service Commission (Commission), which did not substantiate her allegation to support a finding that she had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, D.C-W., an African-American female, filed a complaint with Corrections alleging that the Commission subjected her to race and color discrimination. Specifically, D.C-W. filed a request for a classification review contending that her duties and responsibilities were consistent with the job specification for Education Program Assistant 1. On August 2, 2016, the Division of Agency Services (Agency Services) issued a determination indicating that D.C-W.'s duties were consistent with her current title, Institutional Technician Secured Facilities and on August 24, 2016, D.C-W. appealed this determination to the Commission. However, from January 2016 to October 19, 2016, the Commission did not have a quorum, which resulted in the cancellation of 18 meetings. Consequently, when the Commission reconvened in October 2016, it was required to adjudicate more than eight months of appeals received prior to D.C-W.'s August 24, 2016 appeal.

During the pendency of her classification appeal to the Commission, on April 11, 2017, D.C-W. filed the subject State Policy complaint against the Commission. D.C-W. alleged that Agency Services and the Commission treated D.C-W. less

favorably than a similarly situated Caucasian female, S.P-T., in her office who filed a classification appeal. Specifically, D.C-W. alleged that S.P-T.'s position was reclassified to a higher title¹ after Agency Services issued its determination, while her position was not, and S.P-T.'s appeal to the Commission was decided in approximately two months, while her appeal to the Commission was still pending since August 2016. The investigation revealed that there was no evidence to suggest that race was a factor in any of Agency Services' determinations as the Position Classification Questionnaire (PCQ) does not request or include information on an individual's race/color, that D.C-W. and S.P-T. were not similarly situated with regard to their classification appeals as S.P-T. was a Principal Clerk Typist and D.C-W. was an Instructional Secured Facilities at the time of their respective classification appeals, that the reason that D.C-W.'s appeal to the Commission was still pending at the time she filed her State Policy Complaint was that the Commission lacked a quorum and 18 meetings were cancelled, and that S.P-T.'s appeal to the Commission was denied on November 18, 2015 along with a dozen other classification appeals, the majority of which were filed by Caucasians. Accordingly, on July 18, 2017, the Deputy CEO issued a determination finding that the Equal Employment Opportunity (EEO) office's investigation did not substantiate her allegations against the Commission. Further, on July 26, 2017, the Commission denied her classification appeal.

On appeal, D.C-W. indicates that she did not ask that the investigation be transferred to the Commission's EEO, and that she did not believe that Corrections could investigate the matter without a conflict. Further, D.C-W. makes specific State Policy allegations against Corrections. D.C-W. alleged that Corrections subjected her to race and color discrimination. During her appeal regarding her allegations against the Commission, D.C-W. raised certain State Policy allegations against Corrections. Corrections' Equal Employment Division (EED) indicates that it has opened an investigation regarding these allegations and will issue a future determination for these allegations. Additionally, her union representative submits comments regarding how Corrections has discriminated against D.C-W. She also complains that she was not interviewed by the EEO as part of the investigation.

In response, the Deputy CEO indicates that the matter was transferred not because there was a conflict, but because D.C-W. alleged that the Commission violated the State Policy. She states that D.C-W. was advised during the investigation that the EEO would contact her if additional information was needed and she did not object. Additionally, the Deputy CEO highlights that the State Policy does not mandate that D.C-W. be interviewed and it was apparent from her

¹ S.P-T.'s title at the time of her classification review was Principal Clerk Typist. She sought classification as an Education Program Assistant 1. Agency Services determined that her position was best classified in the next-lower title of Education Program Assistant 2. S.P-T. appealed Agency Services' determination contending that her position should be classified as an Education Program Assistant 1.

complaint that the allegations against it did not require additional information. The Deputy CEO emphasizes that the PCQ that D.C-W. completed for her classification review does not request or include an individual's race. Further, as the Commission and Corrections are completely separate agencies, there is no basis to impute that Agency Services had any knowledge of her race when making its classification determination. The Deputy CEO contends that the appellant filed her State Policy complaint to circumvent Civil Service rules while waiting for her classification appeal to be determined and she has provided no basis that this agency discriminated against her.

In reply, D.C-W. states that the investigation was only transferred to this agency's EEO after her union representative got involved. She indicates that she included the Commission in her complaint based on what she felt and knew at the time she filed her complaint. However, D.C-W. emphasizes that her State Policy complaint is against Corrections for its disparate treatment of her as compared to a Caucasian female employee who filed a classification appeal. She claims she is not using a State Policy complaint to contest a classification review; rather, she is contesting Corrections' actions, which influenced this agency's decision.

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 race and color, is prohibited and will not be tolerated.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

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 D.C-W.'s allegations that this agency subjected her to race and color discrimination cannot be substantiated. The investigation revealed that the PCQ that D.C-W. submitted for her classification review did not include any information regarding her race and there was no evidence that anyone in Agency Services had knowledge of her race during the review process or when making its determination. Additionally, the reason that D.C-W.'s classification appeal to the Commission was still pending at the time she filed her State Policy complaint was that the Commission lacked a quorum and 18 meetings were cancelled. Moreover, *N.J.A.C.* 4A:7-3.2(i) provides that it is within the EEO's discretion as to how to conduct a State Policy complaint review and as D.C-W. did not provide any witnesses or any specific evidence relating to how this agency discriminated against her, it was

appropriate for a determination to be made without the EEO interviewing her. With regard to her general allegation that she was disparately treated as compared to a Caucasian female who also filed a classification review, D.C-W. has not submitted one scintilla of evidence that her race played any factor in her treatment by the Commission. Mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

Regardless, her claims of discriminatory treatment are directed at Corrections' staff who allegedly delayed submitting her PCQ to Agency Services and who purportedly removed duties after her PCQ was sent to Agency Services for review. While Corrections' EED has indicated that it has opened an investigation of these matters, there is no evidence in the classification reviews to suggest Corrections' staff delayed submitting her request for classification review to Agency Services while promptly forwarding S.P-T.'s. In this regard, S.P-T. signed her PCQ on December 11, 2014 and it was signed by the Program Manager and appointing authority not in support of the request, and forwarded to Agency Services on January 16, 2015. (36 Days). D.C-W. signed her PCQ on February 29, 2016 and the Program Manager and appointing authority signed, not in support, on April 1, 2016 and it was sent to Agency Services on April 4, 2016, (36 Days). Thus, both requests were processed by Corrections and sent to Agency Services for review in 36 days. Therefore, the Commission finds that the EEO's investigation was prompt, thorough and impartial and D.C-W. has not met her burden of proof.

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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