



STATE OF NEW JERSEY

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

In the Matter of H.P., Department of
Transportation

CSC Docket No. 2019-1723

Discrimination Appeal

ISSUED: JUNE 27, 2019 (CSM)

H.P., a Project Engineer Planning with the Department of Transportation (DOT), appeals the determination of the Director, Division of Equal Employment Opportunity/Affirmative Action (EEO/AA), Civil Service Commission (Commission), which found that his various complaints did not implicate the State Policy Prohibiting Discrimination in the Workplace (“State Policy”).

By way of background, on or about November 20, 2018, the appellant (Asian, Male) sent an email to the Office of the Governor which stated in relevant part that he wanted “help and guidance regarding very sensitive matters.” The email was forwarded to this agency’s EEO/AA for further action as deemed appropriate. Thereafter, the appellant was interviewed by an investigator on November 28, 2018, December 4, 2018, and December 11, 2018, and relevant documentation was reviewed.

During his interviews, the appellant complained that he heard that N.M., Director, and J.B., Assistant Commissioner, are “more than friends”; that M.R.’s, Assistant Commissioner, wife, S.R., Administrative Assistant 2, works under his chain of command; that N.M. hires whoever she wants; a consultant for the DOT is running her own catering business while at work; that N.M. is not approving the appellant’s time sheets in a timely manner and has not had a PAR completed since March 2018; that N.M. told the appellant’s previous supervisor to “bring the numbers down” on his PAR and directed P.T., a retired Manager 2, to give K.C., Section Chief, an unsatisfactory PAR rating; that N.M. told the appellant that he did the “bare minimum” on a project; that there are two Manager vacancies and the

appellant believes that N.M. is “front running the process” as she “already knows who she wants to hire; that four employees recently retired because of N.M.; that in 2016 he witnessed N.M. shout at P.T.; that N.M. favors some projects over others; and that on June 5, 2018, G.C., Manager, emailed a number of employees, including the appellant, which included the statement, “If we steal [H.P.] back – he’ll have knowledge of both [Programs].” During his interviews, the appellant never mentioned any of the conduct described above was based on a protected category. Therefore, since he failed to allege any discriminatory conduct, the EEO/AA indicated that it would not investigate the above allegations.

However, the appellant also claimed that during the summer of 2018, he was interviewed by the DOT Civil Rights Office regarding a 2016 incident involving N.M. and P.T., but did not sign a statement. Afterward, the appellant claimed that DOT employees were now “patrolling” and it might be because N.M. was being investigated. As an example, the appellant stated that N.B. stopped by a project he was working on with the State Police in 2018. The EEO/AA determined that there was no evidence of the appellant’s participation in the prior DOT Civil Rights Office investigation. Therefore, since the appellant’s examples of “patrolling” did not result in any adverse employment action and management has a right to monitor their employees, the State Policy was not implicated. Additionally, the appellant claimed that G.C. “circled her palm” on his back, without his permission. As such, in an abundance of caution, corrective action was taken regarding the allegation of unwanted touching by G.C.

Subsequently, in emails sent to the EEO/AA on December 19, 2018 and January 21, 2019 (including a statement dated January 18, 2019), the appellant claimed that N.M., in response to an email she received from a “female Treasury Procurement Specialist,” referred to the woman as a “Son of a bitch”; that G.C. then stopped by N.M.’s office while the appellant was there, and referred to the female Treasury employee as, “such an asshole”; that N.M. stated that the “incoming manager will not have much knowledge about the Federal Transit program more than her” and that N.M. is “running a discriminatory hiring process.” The EEO/AA determined that these allegations did not implicate the State Policy. It is noted that during the three days the appellant was interviewed, he never indicated that the hiring process was discriminatory. Rather, he made the claim regarding the “hiring process” after the EEO/AA issued its determination letters.

On appeal, the appellant provides an email dated July 18, 2018 from C.G., Executive Secretary, M.R.’s secretary, acknowledging that due to staff changes and retirements, it has in fact affected his workload. Although both his managers recommended him for promotion, he has not yet been promoted but continues to perform the higher level managerial duties. The appellant notes that the individuals who recommended his promotion are “male managers” and “age over 40.” Additionally, he states out of four recent retirements, three were male all from

the protected category of “Age’ (over 40 years) and ‘Male.’” Regarding the email indicating “if we ever steal [H.P.] back,” the appellant notes that he is already handling two programs and questions what G.C.’s “plan” is for him. He claims that he is being singled out for adverse treatment based on his religion, race, and culture and was subjected to unwanted touching. The appellant reiterates his claims regarding his PAR administration issues and ratings, N.M. shouting at P.T., and disrespectful language regarding a female procurement specialist and states that P.T., K.C. and himself all fall under the protected category of age. Further, he asserts that an individual started working for the DOT without the formal job posting and interview process. The appellant claims that N.M.’s “blocking” of him before the Manager interviews are held and not timely completing his time sheets and PARS are in retaliation for his participating as a witness in an August 2018 DOT Civil Rights interview. Additionally, the appellant claims that after these Civil Rights interviews, “patrolling” or “micro-managing” has been occurring around his work areas and he states this is because he belongs to the protected categories of race, color and age.

In response, the EEO/AA states that for the first time, in his appeal submission to the Commission, the appellant simply identifies protected categories that he may belong to, but fails to provide any evidence to show that his initial allegations, and the allegations he provided in his appeal, are based on any protected category. For example, when asked by the investigator during his interview as to why he believed that N.M. did not believe he was ready for one of the Manager openings, the appellant responded:

She wants to bring in someone from the outside who will take marching orders from whatever she says, she doesn’t want resistance because P was very keen on not doing anything unethical and M too” ... that N.M. “wants to have her own inner circle.”

However, the appellant never articulated during his interview with the investigator that he believed he was not being considered for the position based on any protected category. Similarly, regarding the hiring process for Analyst Trainees, the appellant indicated that “N.M. can trust Ms. R,” but did not state that this person was being favored because of a protected category. The appellant’s allegation that “male managers and age over 40 years” who recommended him, and three out of the four recent retirees are all from the protected category of age, without evidence that the protected category played a role in an employment decision, is insufficient to implicate the State Policy.

The EEO/AA also indicates that G.C. stating that she would like to “steal” the appellant due to his knowledge in both areas is not discriminatory and that his, as well as other DOT employees, had their workloads effected by retirements. The appellant also did not provide any evidence that P.T. was instructed to lower his

PAR based on his membership in a protected category and that there was no evidence that N.M.'s shouting at P.T. was because of his age and sex. The EEO/AA underscores that the mere fact that three men over 40 may have been present is not sufficient to establish the conduct was discriminatory. Regarding the unwanted touching by G.C., the EEO/AA states that this allegation has been addressed and corrective action taken and that derogatory references, "such an asshole" and "son of a bitch", although inappropriate, do not implicate the State Policy. With respect to the appellant's allegations regarding "patrolling", the EEO/AA states that this does not implicate the State Policy because none of the incidents resulted in any adverse employment action. In this regard, it emphasizes that management has the right to monitor its employees.

Although provided the opportunity, the appellant did not provide any additional information for the Commission to review in this matter.

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.

N.J.A.C. 4A:7-3.2(i) states, at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. Additionally, 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 the appellant has not met his burden of proof. Over the course of three days, the EEO/AA interviewed the appellant. The appellant complained that he heard that N.M., Director, and J.B., Assistant Commissioner, are "more than friends"; that M.R.'s, Assistant Commissioner, wife, S.R., Administrative Assistant 2, works under his chain of command; that N.M. hires whoever she wants; a consultant for the DOT is running her own catering business while at work; that N.M. is not approving the appellant's time sheets in a timely manner and has not had a PAR completed since March 2018; that N.M. told the appellant's previous supervisor to "bring the numbers down" on his PAR and directed P.T., a retired Manager 2, to give K.C., Section Chief, an unsatisfactory PAR rating; that N.M. told the appellant that he did the "bare minimum" on a project; that there are two Manager vacancies and the appellant believes that N.M. is "front running the process" as she "already

knows who she wants to hire; that four employees recently retired because of N.M.; that in 2016 he witnessed N.M. shout at P.T.; that N.M. favors some projects over others; and that on June 5, 2018, G.C., Manager, emailed a number of employees, including the appellant, which included the statement, "If we steal [H.P.] back – he'll have knowledge of both [Programs]." During his interviews, the appellant never mentioned any of the conduct described above was based on a protected category. Rather, in his appeal to the Commission, the appellant simply references a protected category he or other employees may be part of to these allegations. Other than simply referencing various protected categories, the appellant has provided no argument or evidence to demonstrate a nexus between the allegations and the State Policy. As such, the EEO/AA's determination not to further investigate these matters because they did not implicate the State Policy was appropriate. Additionally, in its response to his appeal, which is unrebutted by the appellant, the EEO/AA provided the appellant an extensive explanation as to why these allegations did not touch on the State Policy. Therefore, the Commission will not address these issues in this appeal.

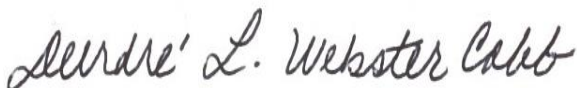
With respect to G.C.'s alleged unwanted touching, the EEO/AA, in an abundance of caution, ordered that corrective action be taken to address this matter. Regarding the appellant's allegations regarding the "patrolling" of his work area after participating in a DOT Civil Rights Office investigation, the EEO/AA determined that there was no evidence of the appellant's participation in the prior DOT Civil Rights Office investigation. Even if there was evidence, the appellant's examples of "patrolling" did not result in any adverse employment action and management has a right to monitor their employees, the State Policy was not implicated.

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
26TH DAY OF JUNE , 2019



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