



STATE OF NEW JERSEY

In the Matter of G.D.,
Department of Banking and
Insurance

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

CSC Docket No. 2018-3441

Discrimination Appeal

ISSUED: SEPTEMBER 13, 2019 (JET)

G.D., a Supervisor of Investigations with the Bureau of Fraud Deterrence, Department of Banking and Insurance, appeals the determination of the Director, Division of Equal Employment Opportunity/Affirmative Action, Civil Service Commission, which found that his various complaints did not implicate the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant submitted a complaint dated March 14, 2018 to M.C., Acting Commissioner, Department of Banking and Insurance (DOBI), alleging that his supervisors had subjected him and other employees in the workplace to discrimination based on age in violation of the State Policy.¹ Specifically, the appellant alleged that R.D., a Manager 1, Insurance, J.B., a Government Representative 1,² and J.D., a Manager 2, Insurance,³ participated in a campaign against the appellant and other employees near his age to force older employees with prior law enforcement experience to resign from the workplace. The appellant alleged that the campaign consisted of creating difficult situations for employees and then ignoring and criticizing how they addressed such matters. The appellant indicated that, in March 2015, he was assigned to supervise Investigators who were not properly trained with respect to work policies. The appellant claimed that he was assigned to supervise an Investigator who was “handful” as a result of the

¹ The appellant did not name any employees who may have been discriminated against in his initial complaint.

² J.B. separated from State service effective June 1, 2018.

³ J.D. separated from State service effective February 7, 2018.

employee's medical and disciplinary histories.⁴ In this regard, the appellant alleged that he was not provided with adequate background information pertaining to the subordinate Investigator's various histories and, as a result, he was unable to properly supervise the employee. He added that R.D. referred to that Investigator as "a great insurance fraud Investigator" despite the problems the appellant was experiencing with that employee.

Further, the appellant complained that his supervisors removed his supervisory authority and set him up to fail, including criticizing him and removing his authority to approve leave requests for employees. In this regard, the appellant explained that he was falsely accused of improperly approving leave requests for employees who had run out of leave time, and as a result, R.D. asked to be notified about such requests in the future. As such, the appellant asserted that R.D. effectively removed his supervisory duties. Moreover, the appellant alleged that disciplinary action was improperly issued against him. Specifically, in addition to the leave request issue, he indicated that when a subordinate Investigator⁵ was involved in an accident in his State-issued vehicle, he properly prepared an accident report, attached it to a memorandum, and submitted such information to R.D. The appellant explained that, although such information only established that there were inconsistencies with the Investigator's version of events, R.D. improperly criticized him for signing the accident report.⁶ The appellant added that R.D. falsely accused him of taking a defensive driving course while at work, and he explained that he did not take the class on his State-issued computer.⁷ Moreover, the appellant stated that J.S., a Personnel Assistant 2, Employee Relations, submitted an affidavit which erroneously indicated that the appellant took the defensive driving course at work for personal reasons. The appellant contended that no disciplinary action was issued as a result of the false information that was provided.⁸

The appellant also complained that a conflict existed as B.N., the former EEO Officer, DOBI, had a personal relationship with his supervisors that prevented her from conducting an adequate investigation into his claims.⁹ As a result, the

⁴ The appellant did not name the subordinate Investigator on appeal.

⁵ The Investigator who was involved in the incident is the same Investigator with whom the appellant was experiencing supervisory difficulties.

⁶ The appellant states that 10 months after the incident occurred, he met with R.D. and J.D. on several occasions with respect to the incident. He adds that R.D. provided instructions with respect to completing the accident report.

⁷ The appellant explains that he completed the defensive driving course in New York after work.

⁸ The appellant states that R.D. did not ask him about the defensive driving course, as the appellant would have produced documentation at the time to show that he did not take the course at work.

⁹ This agency's EEO/AA investigated the appellant's concerns with respect to B.N., and it did not find that she had any personal relationships with the appellant's supervisors. It indicated that B.N.'s duties include interacting and assisting employees in the workplace with, among other things, issues concerning the State Policy.

appellant's complaint was reassigned to this agency's EEO/AA office to conduct an investigation.

After conducting an investigation, the EEO/AA determined that there was no nexus between the appellant's allegations and age in violation of the State Policy and stated that no further action would be taken. In support of this determination, the EEO/AA found that the appellant received various trainings including PAR Forms Training; ePAR Training for Users; SANS Securing the Human online training; State Policy training; Workplace Violence training; Microsoft Excel 2010 Basic training; State employees ethics training; and Supervisory Training Empowering Performance (STEP) training.¹⁰ The EEO/AA indicated that the appellant was appointed as a Supervisor of Investigations in October 2010, and that as a supervisor, part of his duties include handling difficult employees. The EEO/AA was concerned that the appellant had mentioned the subordinate Investigator's medical history and that he described the employee as a "handful." The EEO/AA determined that it would have been a possible violation had the appointing authority provided the appellant with the subordinate Investigator's medical and disciplinary information, especially in light of the fact that a disability is a protected category under the State Policy. The EEO/AA noted that the appellant should treat employees with medical histories the same as any other employee and act accordingly if medical accommodations are required.

With respect to the subordinate Investigator's use of leave time, the EEO/AA explained that it is not uncommon for the Office of Human Resources and management to be notified when employees run out of leave time, as it may be necessary to issue disciplinary action or in the alternative, to approve leave requests that may only be authorized by administration. As such, the EEO/AA determined there was no nexus between the appellant's allegations and advising his supervisor of a subordinate employee's leave request that would substantiate a violation of the State Policy based on age.

The EEO/AA further found that a Preliminary Notice of Disciplinary Action (PNDA) was initially issued against the appellant, alleging that he failed to properly review a subordinate Investigator's leave request and improperly approved an inaccurate timesheet. The PNDA further alleged that the appellant was involved in an accident in a State-issued vehicle, and he took a New York defensive driving course on his State-issued computer during worktime. However, the appointing authority subsequently rescinded the PNDA, and as a result, the EEO/AA found that it was erroneously issued. As such, the EEO/AA determined that there was no substantive information to confirm that the proffered disciplinary action was based on the appellant's age.

¹⁰ The dates listed for such trainings were June 25, 2013; January 8, 2015; November 17, 2017; September 4, 2012; January 9, 2012; May 26, 2015; August 10, 2012; May 21, 2013; April 13, 2017; and March 15, 2017, respectively. The STEP training is a seven-week supervisory training course.

The EEO/AA reviewed the organizational chart for the appellant's unit and, as of January 2018, it revealed that the majority of employees serving as an Investigator were over age 50, the majority of employees serving as a supervisory Investigator were over age 45, and various other employees were over age 60. The EEO/AA found that the majority of employees hired as an Investigator after 2016 were over age 45, and an Investigator hired in 2017 was over age 60. As such, the appellant's allegations with respect to other employees near his age in workplace were not substantiated. Accordingly, the EEO/AA determined that there was no substantive information to confirm a violation of the State Policy based on the appellant's age.

On appeal, the appellant maintains that an investigation was not properly conducted, and his reputation was tarnished by his supervisors. He reiterates all of his previous allegations and highlights his belief that all of the actions taken against were harassing and in violation of the State Policy.

In response, the EEO/AA maintains that there was no violation of the State Policy and it reiterates much of the findings that were indicated in its initial determination. The EEO/AA maintains that it conducted an investigation and reviewed pertinent information with respect to the appellant's complaint, including relevant documentation pertaining to the appellant's training in his supervisory position, disciplinary history, unit and organizational chart showing the age and dates of appointments for various employees. The EEO/AA explains that there was no finding that the appellant's supervisors conducted a campaign against him and other employees in the workplace with the intention of having them resign due to their age. It adds that the appellant received supervisory and various other trainings. The EEO/AA contends that the appellant was not discriminated against when he was assigned to supervise an Investigator who possessed medical and disciplinary histories. Rather, it was a part of the appellant's assignment to supervise that employee. It adds that the disciplinary charges against the appellant were determined to be erroneous and were properly withdrawn by the appointing authority. As such, the EEO/AA's review did not substantiate a nexus with respect to the appellant's allegations to show that he was discriminated against or harassed based on age.

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

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established a nexus between his allegations and age in violation of the State Policy. The record reflects that the EEO/AA reviewed the pertinent documentation and the underlying determination was correct when it determined that a formal investigation was not warranted. Initially, there is no evidence to confirm that the DOBI's former EEO Officer, B.N., maintained a personal relationship with the appellant's supervisors that would have prevented her from conducting a proper investigation. Even presuming the validity of the appellant's statement that the EEO Officer was biased, the appellant has not provided a scintilla of evidence in support of that claim on appeal. Nevertheless, the matter was properly reassigned to this agency's EEO/AA for review. After it reviewed the appellant's allegations set forth in his March 14, 2018 complaint, the relevant documents pertaining to his training, disciplinary history and his unit's organizational chart, in accordance with *N.J.A.C.* 4A:7-3.2(i), the EEO/AA properly exercised its discretion when it determined that no further formal investigation was warranted. In this matter, the Commission is satisfied that the appellant has had a full opportunity to present evidence and arguments on his behalf, and the Commission has a complete record before it upon which to render a fair decision on the merits of the appellant's complaint.

With respect to the appellant's allegations, he has not provided one scintilla of evidence to show that he and other employees were discriminated against or harassed based on age. Regarding the allegations that he was not properly trained as a supervisor, he did not provide any substantive evidence in support of that claim. The record reflects that he received various trainings including PAR Forms Training; ePAR Training for Users; SANS Securing the Human online training; State Policy training; Workplace Violence training; Microsoft Excel 2010 Basic training; State employees ethics training; and STEP training. Regarding the appellant's argument that he was "set up to fail" by his supervisors and he was assigned to supervise an employee who was a "handful," such information, in and of itself, does not establish that the appellant was discriminated against based on age. Rather, such information is the appellant's subjective opinion of an employee that he was assigned to supervise. The Commission is concerned about the appellant's description of that employee in the context of this matter. Even if the appellant was provided with the subordinate Investigator's medical and disciplinary background, there is no guarantee that his supervisory responsibilities would have become any less challenging after receipt of such information. Regardless, there is no evidence

to indicate that this legitimate supervisory assignment was used to treat the appellant differently based on his age.

With respect to the appellant's allegations pertaining to his supervisors, he did not provide any substantive evidence in support of his claims of discrimination based on age. Although the appellant's supervisor verbally requested the appellant to provide notice with respect to leave requests for employees who had exhausted their leave time, such information does not establish that his supervisory duties were removed, nor does it show that he was discriminated against or harassed based on his age. Rather, the appellant's supervisor requested such information for legitimate, work-related reasons. Although the appellant's supervisor objected to an accident report that the appellant submitted, it was at the supervisor's discretion to counsel the appellant with respect to the report. While the appellant states that a PNDA was improperly issued against him, the record reflects that the PNDA was withdrawn by the appointing authority and the appellant acknowledges that he was not disciplined. Moreover, there is no evidence that the PNDA was issued due to the appellant's age. Other than the appellant's tenuous claims, there is no information to show that R.D.'s, J.D.'s, and J.B.'s actions as alleged by the appellant were anything other than their exerting their supervisory authority. Even if the appellant disagreed with R.D.'s, J.B.'s, and J.D.'s style of management, the Commission has consistently found that disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Moreover, management or supervisory style is not reviewable under the State Policy unless that style evidences some form of discriminatory conduct under the Policy, which in this case, is not evident.

Additionally, there is no evidence to show that other employees were singled out or harassed based on their age. Although the appellant states that other employees near his age were discriminated against, the organizational chart reflects that the majority of employees in the appellant's unit were between 45 and 60 years old. Moreover, the appellant did not name any witnesses, and as such, his arguments are not persuasive.

One final matter warrants comment. *N.J.A.C.* 4A:7-3.2(d) provides that supervisory employees shall immediately report all alleged violations of the State Policy to the EEO/AA. Such a report shall include both alleged violations reported to a supervisor, and those alleged violations directly observed by the supervisor. In this matter, the appellant did not report the names of the employees who he believed were subjected to age discrimination. As such, the appellant is reminded of his supervisory obligation to immediately notify the EEO/AA if he is aware of any similar matters in the future.

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 10th DAY OF SEPTEMBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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