



STATE OF NEW JERSEY

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

In the Matter of B.G., Department of
Transportation

CSC Docket No. 2019-2245

Discrimination Appeal

ISSUED: FEBRUARY 14, 2020 (SLK)

B.G., an Electrical Mechanic with the Department of Transportation (DOT), appeals the decision of the Chief of Staff, which did not substantiate his allegations to support a finding that he had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, B.G. alleged that M.P., Administrative Analyst 3, K.M., Regional Electrical Supervisor, T.L., Assistant Regional Electrical Supervisor, H.G., Area Supervisor, E.K., Crew Supervisor Electrical Operations, A.T., Jr., Crew Supervisor Highway Operations, K.I., Assistant Crew Foreman Highway Operations, K.R., Micro-Electronic Systems Technician, and J.F., Electrical Mechanic, engaged in retaliatory acts against him in violation of the State Policy. Specifically, B.G. alleged that these individuals were manipulated to retaliate against him by permanently removing him from his employment as a truck driver in the Winter Operation Support Team (WOST) program. B.G. indicates that he was advised he was removed from the program because of two incidents where he was seen with the truck parked and the engine off. B.G. argued that this was not a valid reason because there was a policy against vehicles idling and management could not provide the specific dates of these incidents. Also, B.G. indicated that M.P. said that the decision to remove him from the program was made in May and he noted that he filed his original complaint against J.F. on May 2, 2018 alleging age discrimination and harassment. Additionally, B.G. alleged that he was subjected to retaliation because he was reassigned from the Totowa Electrical Yard

to the Stanhope Electrical Yard and he was not reimbursed for commuting expense to the Newark Yard as promised. Lastly, B.G. alleged that the Office of the Inspector General's (OIG) investigation of an accident that he was involved in on July 23, 2018 and the subsequent charge of unauthorized use of a State vehicle was retaliatory and an attempt to get rid of him.

The investigation revealed that B.G. filed a complaint on May 2, 2018 alleging age discrimination and harassment. However, the Division of Civil Rights and Affirmative Action (Civil Rights) was unable to substantiate the allegations. Witnesses confirmed that B.G. was not removed from the WOST program. Instead, he was advised that he would not be returning to the Ramsey Yard for snow work due to supervisor concerns about his work performance and he was offered and accepted a snow plow driver position with the Fort Lee crew. Additionally, witnesses corroborated that management decided that he should not return to the Ramsey Yard because he would shut the truck off during a shift and supervisors could not reach him on the two-way radio and cell phone. B.G. contended that management's decision was not valid because he believed there was a policy against vehicle idling. However, the investigation revealed that there are exceptions to the no vehicle idling laws which includes DOT's dump trucks during winter events.

Concerning B.G.'s allegation that he was not reimbursed for his commuting expenses to Newark as promised, the investigation revealed that the delay in reimbursement was because his request lacked the appropriate insurance card and the appropriate travel expense invoice and was not retaliatory. Regarding his reassignment to the Stanhope Yard, management explained that the reassignment was made due to a complaint filed against B.G. Finally, with respect to OIG investigating his accident, the interviews that were conducted and documents that were reviewed demonstrated that the State Vehicle Accident Report that B.G. submitted concerning the accident conflicted with the police report that indicted that B.G. was at fault.

On appeal, B.G. presents that his removal from the snow program in the Ramsey Yard was based on decisions that were made in early May 2018, which is right after he filed his State Policy complaint against J.F. on May 2, 2018. Thereafter, his second reassignment, which was out of his home yard of Totowa to Stanhope, was made on June 13, 2018, and the drive is 45 miles from his home. Further, he was involved in a traffic accident on July 23, 2018, for which he received a five-day suspension even though there were no injuries, no damage to a State vehicle and no summonses issued. Also, B.G. indicates that he had to drive his own car to Newark after his State truck was taken away and he lost his privilege to use a State phone and laptop. Additionally, on June 5, 2018, B.G. states that J.F. filed a false workplace violence complaint against him alleging that he drove at him while going home for the day. B.G. argues that these negative actions

that have taken place against him since he filed his State Policy complaint against J.F. cannot be a coincidence.

In response, Civil Rights presents that the investigation revealed that the decision to move B.G. from the Ramsey Yard was based on two different incidents where B.G. could not be reached on the State radio and he was found with the truck off and asleep. Further, B.G. was not reimbursed for his Newark commuting expenses because he did not provide the required documentation and B.G. even stated in an e-mail concerning the reimbursement delay, "At least I cannot blame J.F. for this retaliation." Additionally, B.G. was moved to the Stanhope Yard because of a complaint filed against him and was predicated on Human Resource's directive. With respect to the accident, this incident was investigated by the OIG because B.G.'s account of the accident conflicted with the police report, which indicated that B.G. was at fault due to an improper lane change and the other vehicle was sideswiped, sustaining minor damage to the front bumper. This led to B.G. receiving a five-day suspension.

In reply, B.G. presents that his issues all started after J.F. arrived in early 2017 in the Totowa Yard as J.F. has constant complaints, makes crude remarks, engages in vandalism and other inappropriate behavior. He claims that J.F.'s arrival is responsible for many employees leaving State employment. For example, on March 7, 2018, B.G. states that J.F. threatened him with a large State bucket loader. However, in response to B.G.'s complaint, J.F. was found innocent and the appointing authority warned B.G. against filing false complaints. B.G. asserts that he has written many letters about the unhealthy workplace environment in the Totowa Yard since 2017, but no action has been taken against J.F. and his co-conspirators. Instead, they got their wish by having him reassigned to the Stanhope Yard. B.G. contends that since these negative events have taken place after J.F.'s arrival, it cannot be coincidence. Therefore, he believes these actions were retaliatory for his complaints against J.F.

CONCLUSION

N.J.A.C. 4A:7-3.1(h) states, in pertinent part, that retaliation against any employee who alleges that she or he was the victim of discrimination/harassment is prohibited under the State Policy. *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.

In this matter, B.G. has not provided once scintilla of evidence, such as a corroborating witness or document, to show that any actions taken by the respondents were in retaliation for his filing discrimination complaints against J.F. Instead, B.G. presents many actions that were taken against him after he filed a State Policy complaint and asserts that this cannot be a coincidence. However, mere speculation, without evidence, is insufficient to substantiate a violation of the

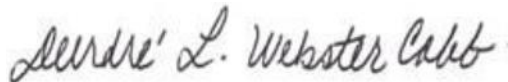
State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Moreover, the investigation revealed that there were two incidents in the Ramsey Yard where B.G. could not be reached by State radio as his truck was off and he was asleep. Further, his explanation that he shut his vehicle off because it was illegal to leave a vehicle idling was not valid as the law allows vehicles used to clear a snow emergency to idle. Additionally, the investigation revealed that he was not reimbursed for his commuting expenses to the Newark Yard because he failed to provide the needed documentation. Also, his reassignment to the Stanhope Yard was made due to Human Resource's directive after a workplace complaint was filed against B.G. and not for retaliatory reasons. Moreover, B.G.'s motor vehicle accident was investigated by the OIG, which led to a five-day suspension, because the police report conflicted with his account of the accident, as the report indicated that the accident was B.G.'s fault. Finally, even if B.G. disagrees with any of these actions and thinks they are unfair, 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). Therefore, the Civil Service Commission finds that Civil Rights' investigation was prompt, thorough and impartial and B.G. has not met his 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 12th DAY OF FEBRUARY, 2020



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