



STATE OF NEW JERSEY

In the Matter of S.B., South Woods
State Prison

CSC Docket No. 2024-474

**FINAL ADMINISTRATIVE ACTION
OF THE CHAIR/
CHIEF EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION**

Grievance Appeal

ISSUED: September 14, 2023 (SLK)

S.B., an Assistant Social Work Supervisor Secured Facilities, South Woods State Prison, Department of Corrections (DOC), represented by Sean Thom, Staff Representative, CWA Local 1040, appeals the denial of his grievance concerning the exclusion of his participation in the Model Telework Pilot Program for State Executive Branch Employees (Pilot Program).

By way of background, in response to the COVID-19 pandemic, the State predominantly shifted to telework and demonstrated that much of the State workforce could work from home. Further, in response to the worldwide shift to telework as a benefit to employees and in order to stay competitive in attracting top talent, in *In the Matter of Model Telework Pilot Program, State Executive Branch Employees* (CSC, decided April 6, 2022), the Civil Service Commission (Commission) established a Pilot Program for a period of one year, effective July 1, 2022. The Pilot Program Guidelines (Guidelines) advise that the determination of operational needs is at the sole discretion of the appointing authority and such pilot programs may not allow for more than two days of remote work in a calendar week. Additionally, in *In the Matter of Model Telework Pilot Program, State Executive Branch Employees* (CSC, decided July 1, 2022), the Commission amended the Pilot Program, under the *Equity and Accessibility* section, regarding the Alternative Work Program (AWP) and Flextime. Moreover, in *In the Matter of Model Telework Pilot Program, State*

Executive Branch Employees (CSC, decided June 7, 2023), the Commission extended the Pilot Program until June 30, 2024.

In response to the Pilot Program, the DOC reviewed its operational needs and decided to exempt Programming and Support Services staff, which includes S.B.'s position, from the Pilot Program. However, it did adopt an AWP which allowed staff excluded from the Pilot Program the option of an alternative work week, enabling one full day off per week. S.B. had requested to telework one day per week, specifically on Fridays; however, his request was denied. In response to the exclusion from the Pilot Program, S.B. filed a grievance, which was denied.¹ Thereafter, S.B. filed the subject request.

In his request, S.B. indicates that when he initially applied for telework, he was informed by the DOC that he was deemed ineligible for the Pilot Program due to him not being able to complete his institutional duties while working remotely. He presents that he grieved his denial from the Pilot Program, a Step 1 hearing was held, and the hearing officer recommended upholding the DOC's decision to exclude him from the Pilot Program because he needed to have direct contact with the incarcerated population. Subsequently, S.B. appealed the decision to Step 2 of the grievance process, which the hearing officer also denied for the same reason.

S.B. states that during the Step 2 hearing, he presented documentation from a work log that he kept which noted his daily responsibilities dating back to Fall of 2022. He contends that he clearly outlined how he could complete all his institutional duties within four days a week, which would make him potentially able to telework one day per week. S.B. asks that the grievance documentation be reviewed as well as his work log to ascertain whether he is able to participate in the Pilot Program. He indicates that in his work log, he circled the duties that he can perform remotely. S.B. believes that he has more than shown that he can fulfill his institutional work duties within four days, and he should be granted the ability to telework one day per week.

CONCLUSION

N.J.A.C. 4A:2-3.7(b)2 provides that grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal. *N.J.A.C.* 4A:2-3.7(f)1 provides that if the above standard is met in grievance matter, the employee shall have the burden of proof.

In this matter, S.B. has not met the standard for review of a grievance appeal as he has not presented an issue of general applicability. Specifically, unlike *In the Matter of Telework Program Complaint, Department of Children and Families* (CSC,

¹ This background comes from the August 9, 2023, hearing officer's decision regarding S.B.'s grievance.

decided February 1, 2023) *aff'd In the Matter of Telework Program Complaint, Department of Children and Families* (CSC, decided May 24, 2023), where the appellants' grievance appeal met the standard for general applicability as their appeals represented a group of clerical staff which could have potentially impacted employment Statewide,² S.B.'s appeal is based on his individual circumstances. Generally, an appointing authority final determination in grievance proceedings will not be disturbed unless there is substantial credible evidence that such determinations were motivated by invidious discrimination considerations such as age, race or gender bias or were in violation of Civil Service law or rules. *See N.J.A.C. 4A:2-3.7(b)2*. Further, the DOC denied S.B. from participating in the Pilot Program based on its determination of its operational needs. Upon appeal, S.B. claims that his work log demonstrates that he can complete all the in-person work that he needs to perform in the correctional facility Monday through Thursday, and he can spend Fridays performing work that can be performed remotely. However, in the aforementioned appeals from certain Department of Children and Families clerical staff, the Commission decided that a review of the Guidelines indicates that "[o]perational needs are the sole discretion of the appointing authority." Moreover, S.B. has not made any argument nor has he submitted any evidence that the DOC's determination was motivated by invidious discrimination considerations. Instead, a review of the hearing officer's decision indicates that the DOC presented legitimate business reasons for its decision. Additionally, S.B. has not submitted any persuasive argument or evidence that the DOC's determination violated any Civil Service law or rules or the Pilot Program Guidelines. As such, S.B. has not met the standard in a grievance appeal. In other words, even if S.B. could "prove" that he can successfully work remotely one day a week while still performing the duties that require a physical presence in the correctional facility four days a week, this is not a basis to disturb DOC's determination as there is no right to telework. Additionally, the DOC addressed any concerns regarding "Equity and Accessibility" by creating an AWP³ for employees who were denied participation in the Pilot Program by allowing such employees to complete their full-time schedules four days a week in a correctional facility and to have one day off.

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.

² On reconsideration, the appellants also made a disparate impact claim. It is noted that both the initial appeal and the request for reconsideration were denied.

³ The hearing officer's decision notes that S.B. has not applied to participate in the AWP. However, even if S.B. finds that the AWP does not meet his needs, regardless of the reason, this is not a valid reason to grant his request as the DOC has determined that S.B.'s request does not meet its operational needs, and it has sole discretion to make this determination under the Guidelines.

DECISION RENDERED BY THE
THE 13TH DAY OF SEPTEMBER, 2023

Allison Chris Myers

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Chair/Chief Executive Officer
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