



B-22

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of S.J., Department of
Human Services

Request for Reconsideration

CSC Docket No. 2015-2682

ISSUED: **NOV 09 2015** (HS)

S.J., a Staff Clinical Psychologist 3 with the Woodbine Developmental Center, Department of Human Services, requests reconsideration of the final administrative decision, rendered on March 4, 2015, which denied her appeal of the determination of the Assistant Commissioner, stating that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). A copy of that decision is attached hereto and incorporated herein.

The facts of this matter, as well as the petitioner's arguments and the determination of the Civil Service Commission (Commission), are fully laid out in the attached decision.

In her request for reconsideration, the petitioner, an African-American, reiterates her initial allegation that L.H., a Caucasian, withheld meeting papers; slammed books; shoved chairs in a hostile manner in her presence; and told others that she did not like the petitioner and that the petitioner did not do her job in order to discriminate against her and retaliate for another discrimination complaint the petitioner had filed against another employee, also a Caucasian. The petitioner claims that no other African-American had filed a complaint against a Caucasian who was considered a friend to L.H. The petitioner also reiterates her request that M.M., Social Worker 2, the witness named by the petitioner in the prior appeal, be interviewed and adds that S.H., a Behavior Support Technician, should also be interviewed. The petitioner further claims that she had to continue working with

L.H. for four to six months under stressful conditions. Finally, the petitioner repeats her request that some type of remuneration be granted.

In response, the Office of Equal Employment Opportunity (EEO) contends that the petitioner's arguments do not meet the standards for reconsideration. Rather, the petitioner reiterates claims already investigated and not substantiated due to a lack of evidence or not rising to the level of discrimination. The EEO adds that the petitioner's claim that no other African-African had filed a complaint against a Caucasian who was considered a friend of L.H. is speculative and provides no basis for reconsideration.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding. A review of the record reveals that the petitioner has not met the standard for reconsideration.

In the instant matter, the petitioner does not present new evidence or additional information that would change the outcome of her case and the reasons that such evidence was not presented at the original proceeding, nor has she shown that a clear material error occurred. In the instant request, the petitioner reiterates her initial allegation that L.H. engaged in various examples of uncivil behavior to discriminate against the petitioner and to retaliate for another discrimination complaint she had filed but presents no new evidence. As noted in the prior decision, all of the witnesses named by the petitioner were interviewed and none provided evidence of a State Policy violation, and there was no indication that M.M. would have provided information that would have materially altered the outcome of the investigation. While the petitioner now requests that S.H. also be interviewed, she does not explain how the information S.H. could provide would materially alter the outcome of the investigation. Moreover, the petitioner did not argue that S.H. should be interviewed in the prior appeal, and she does not provide a reason this argument was not presented there. The petitioner's claim that she had to continue working with L.H. for four to six months under stressful conditions similarly does not change the outcome of this case since that claim is not evidence that L.H. engaged in conduct that violated the State Policy. Moreover, this claim was also not presented in the prior appeal, and the petitioner does not provide any reason this claim was not previously presented. Nevertheless, it is noted that the discretion to take remedial action such as separating employees lies with the State agency. See *N.J.A.C. 4A:7-3.1(g)2*. Finally, the petitioner repeats her request for remuneration. However, as noted in the prior decision, the Commission lacks

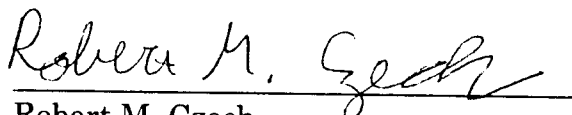
jurisdiction to award monetary damages. Accordingly, the petitioner has not presented a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request for reconsideration 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 5TH DAY OF NOVEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, NJ 08625-0312

Attachment

- c. S.J.
Edward McCabe
Mamta Patel
Kenneth Connolly
Joseph Gambino

that the appellant could intervene with a client and that unnamed co-workers told the appellant that L.H. did not like her. The appellant alleged that these behaviors were due to a prior EEO complaint filed by the appellant against another employee. The appellant also alleged that L.H. slammed books, drawers and chairs in the appellant's presence; told co-workers that she did not like the appellant and that the appellant did not do her job; and failed to give the appellant paperwork at meetings. The appellant claimed that she was treated poorly because she is an African American. The EEO notes that it is uncontested that the appellant in fact filed a prior discrimination complaint. The EEO states that the appellant admitted that there are other African-American employees in the office who were not similarly victimized and that L.H. made no racial comments. The EEO further states that the four witnesses named by the appellant were all interviewed. L.H. denied the allegations and explained that the appellant is often late to meetings, arriving after the distribution of paperwork. One witness stated that L.H. did things to annoy the appellant but could not be specific. The remaining witnesses provided no information that would rise to the level of discrimination against the appellant. In closing, the EEO argues that its investigation was proper and that it appropriately found that the appellant's allegations were not substantiated.

In reply, the appellant states that she has not yet received a witness list. She contends that one of her witnesses, who bolsters her case and supports her assertion that L.H. did not like her, was not called. The appellant also argues that there is a lack of documented evidence for L.H.'s claim that the appellant arrived late for meetings and after the distribution of paperwork.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include 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. *See N.J.A.C. 4A:7-3.1(a)*. Additionally, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. *See N.J.A.C. 4A:7-3.1(h)*. Moreover, 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 in this matter and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation did not substantiate the appellant's allegations. Although the appellant requests a witness list and claims that one of her witnesses was not interviewed, the EEO has indicated that all four of the witnesses named by the appellant were interviewed, and none provided evidence of a violation of the State Policy. Moreover, it does not appear that the information her witness would have provided, as described by the appellant, would have materially altered the outcome of the investigation. While one of the witnesses indicated that L.H. annoyed the appellant and the appellant reiterates on appeal that L.H. did not like her, unprofessional behavior and disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Additionally, there is no evidence in the record that the appellant was treated differently because of her race. In this regard, the appellant acknowledges that L.H. did not make any racial comments nor did L.H. similarly treat other African-American employees. Accordingly, the investigation was thorough and impartial, and no basis exists to disturb the EEO's determination.

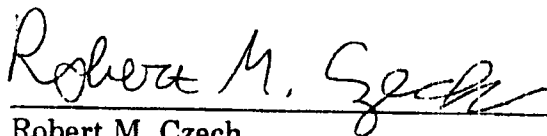
Finally, with respect to the appellant's request for remuneration in compensation for distress caused her by L.H., it is noted that the Commission does not have the jurisdiction to provide an appellant with punitive or monetary damages.

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 MARCH, 2015



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, NJ 08625-0312**

Attachment

- c. S.J.
Edward McCabe
Mamta Patel
Kenneth Connolly
Joseph Gambino**



State of New Jersey
DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON NJ 08625-0700

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

September 26, 2012

S. J.
[Redacted]

Dear Ms. J. [Redacted]

On March 9, 2012, you filed a Letter of Complaint against L. H. [Redacted] a Habilitation Plan Coordinator at Woodbine Developmental Center alleging retaliation and discrimination based upon race. Specifically, you alleged that Ms. H. [Redacted] retaliated against you because of a complaint you filed against S. B. [Redacted] in 2010 and that she discriminated against you because you are black.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Therefore, the Department's Office of Equal Employment Opportunity (EEO) conducted an investigation of your complaint. The DHS Office of EEO and my office reviewed the findings of this investigation.

Your allegations were unsubstantiated. There was no evidence that Ms. H. [Redacted] discriminated against you based on your race or retaliated against you for filing a prior discrimination complaint.

Based on the results of the investigation, it was not substantiated that Ms. H. [Redacted] violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Therefore, this office will take no further action regarding this matter.

If you disagree with this determination, you have the right to file an appeal with the Merit System Board within twenty (20) days of your receipt of this letter. The appeal must be in writing, state the reason(s) for the appeal, and specify the relief requested. Please include all materials presented at the department level and a copy of this determination letter with your appeal. The appeal should be submitted to the Merit System Board, P.O. Box 312, Trenton, N.J. 08625-0312.

Please be advised that pursuant to P.L. 2010, c.28, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your

Advisory, Consultative, Deliberative and Confidential Communication



Page 2

S. [Redacted] J. [Redacted]

appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

At this time, I would like to remind you that the State Policy prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation. Furthermore, this matter remains confidential and the results of the investigation should not be discussed with others.

Should you have any questions, please contact the DHS Office of EEO at (809) 292-2816 or 292-5807.

Sincerely,

Frederick S. Cohen
Assistant Commissioner

FSC: BE

C: Ed McCabe, Office of EEO Director

[Redacted]
Mamta Patel, Treasury



CONFIDENTIALITY NOTICE: This letter is intended for the sole use of the intended recipient and may include confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender by reply letter and destroy any copies of the original documents.