B-19

STATE OF NEW JERSEY

In the Matter of S.B.,
State Parole Board

CSC Docket Nos. 2015-224 and
2015-549

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Discrimination Appeal and
Request for Reconsideration

ISSUED: JUL 31 2015 (JET)

S.B., a Senior Parole Counselor, State Parole Board, appeals the attached determination of the Executive Director, which found that the appellant failed to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). S.B. also requests reconsideration of the attached final administrative decision rendered on July 16, 2014, which determined that he failed to support a finding that he had been subjected to a violation of the State Policy, and he was properly reassigned. Since these matters concern similar issues, they have been consolidated herein.

DISCRIMINATION APPEAL

S.B. filed complaints with the Office of Equal Opportunity (EEO) on December 10, 2013, December 17, 2013, and February 18, 2014, alleging that J.H., a Government Representative 2 and Manager of Employee Relations,[1] denied his request for an accommodation in violation of the State Policy. Further, S.B. alleged that J.H. retaliated against him by issuing a notice of counseling[2] on December 10, 2013 and a Preliminary Notice of Disciplinary Action (PNDA) on January 29, 2014. Due to a conflict of interest, this agency's Division of Equal Employment Opportunity/Affirmative Action (EEO/AA) conducted the investigation of this case. In its June 5, 2014 determination, which noted that relevant witnesses were

[1] It is noted that J.H. also serves as ADA coordinator for the appointing authority.

[2] The record reflects that on December 5, 2013, S.B. sent an e-mail to J.H. using the word "bullshit." In response, S.B.'s former supervisor, Lieutenant R.O., issued a notice of counseling against S.B. for a violation of the SPB Code of Professional Conduct.

interviewed and available documentation was reviewed, the Executive Director did not substantiate the appellant's allegations.

In his appeal dated July 11, 2014, the appellant states that he apologizes for his delay in filing this appeal. In this regard, he states that he planned on having all of his submissions in by the 20 day time frame, but, since he was appealing three different determinations and was getting ready for a vacation, he was not able to file by the 20 day deadline. However, the appellant sent an e-mail to this agency on July 7, 2014 stating that he intended to appeal the determination and requesting another 30 days to submit his appeal. In an e-mail response dated July 9, 2014, staff from the Division of Appeals and Regulatory Affairs (DARA) advised the appellant to submit his appeal and that he could submit arguments after his request is filed as the record will remain open until it is considered complete.

With respect to the merits of his appeal, the appellant requests that he be able to review any and all witness interviews and statements so that he can file an appropriate appeal. Further, he maintains that J.H. retaliated against him because of his requests for a reasonable accommodation. Specifically, the appellant contends that J.H. asked several inappropriate questions to his physician which had nothing to do with the accommodation requests. For example, he claims that J.H. asked the doctor questions regarding his ability to drive and if he possessed a driver's license. Because of the inappropriate questions, the appellant states that he revoked the appointing authority's authorization to request medical information. In this regard, he claims that some of the questions were based on the job specification for Senior Parole Counselor, which indicates that employees must possess a driver's license. In addition, the appellant asserts that J.H. recommended disciplinary charges[3] against him despite that the incidents occurred in furtherance of his accommodations requests.[4] The appellant adds that J.H. does not believe that he is capable of working on confidential material at home. In this regard, the appellant explains that he routinely brings work home in order to transport files to panel hearings on the following day and that other employees were allowed to work from satellite offices closer to their homes. Moreover, he questions why another employee was authorized with an accommodation without the need to request additional information.

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[3] A Performance Notice of Counseling was issued against S.B. on December 10, 2013, for using the word "bullshit" in an e-mail to J.H. Further, a PNDA was issued against S.B. on January 27, 2014, charging him with insubordination, intentional disobedience or refusal to accept an order, assaulting or resisting authority, and disrespect or use of insulting or abusive language to a supervisor. Specifically, S.B. was observed to have made an OPRA request during work hours, and a 15-day suspension was recommended. S.B. agreed to a five-day suspension in a settlement agreement. S.B. maintains that he is not guilty of the charges and is apparently requesting the Commission to review those disciplinary actions.

[4] S.B. indicates that there is no proof that he violated the appointing authority's internet policy.

In response, the appointing authority states that the appellant's appeal of the June 5, 2014 determination is untimely, since the appellant's July 11, 2014 letter of appeal was not filed within the required 20 day time frame, and should be dismissed as untimely. Further, the appointing authority states that the appellant's July 11, 2014 appeal fails to state the reason for the appeal and fails to provide any evidence that the investigation into his allegations should have been substantiated. As such, it argues that the appellant has not provided sufficient information on which to satisfy his burden of proof. Additionally, the appointing authority asserts that the matters the appellant raises in this appeal have already been reviewed in *In the Matter of S.B.* (CSC, decided July 16, 2014). As such, it argues that a final administrative determination has already been made in this matter.

REQUEST FOR RECONSIDERATION

The facts of this matter are extensively discussed in the attached prior decision. Specifically, S.B. alleged, among other things, that his requests for a reasonable accommodation were not properly addressed, that he was subjected to discrimination and retaliation by his former supervisor and various other employees and questioned his reassignment as a result of a disciplinary action. In the prior decision, the Civil Service Commission (Commission) concluded that the appointing authority provided a reasonable accommodation based on the medical documentation provided by the appellant, that there was no evidence of discrimination or retaliation in violation of the State Policy and that his reassignment was proper.[5]

In his request for reconsideration, the appellant states that the Commission committed a clear material error as he does not perform the duties listed in the prior determination. Rather, he states that his job duties included, among other things, monitoring a federal online program used to monitor parole transfer from one state to another. He also asserts that the prior decision does not mention two other appeals he has filed and that the witnesses who were interviewed were not credible. The appellant also states that the prior decision did not mention that he filed an appeal regarding Y.G's failure to follow Civil Service rules regarding his close out PAR. Further, he states that he advised the Commission of the misdeeds committed by the appointing authority in another matter which resulted in his arguments being included in *In the Matter of Joseph Inverso and Christopher Williams* (CSC, decided April 23, 2014). As such, the appellant contends that the Commission's acceptance of his arguments in that matter demonstrates that the appointing authority has a past practice of making misleading claims – which he states gives his allegations of discrimination more weight. Moreover, he maintains

[5] The prior decision noted that, as an employee represented by the Communications Workers of America, S.B. could not appeal the disciplinary action to the Civil Service Commission pursuant to *N.J.S.A.* 11A:2-14.

that he was reassigned as part of a disciplinary action prior to a hearing in violation of *N.J.S.A.* 11A:4-16 and that this violated his due process and equal protection rights guaranteed by the Constitution. In addition, the appellant asserts that he was discriminated against due to the appointing authority's six month delay in scheduling his hearing. Additionally, the appellant requests that the Commission defer making a decision of this matter until his separate but related disciplinary matters are resolved via arbitration and mediation.[6] Further, he asserts that the appointing authority failed to follow its own rules as outlined in its Reasonable Accommodation manual which had a discriminatory impact.

With respect to his request for an accommodation to work from home, the appellant contends that the appointing authority's explanation regarding the ICAOS[7] and ICOTS[8] systems is incorrect, as those programs are not restricted to government personnel. He explains that, while his arguments consist of "pure conjecture," he could potentially access the ICOTS program from his home since all law enforcement personnel have access to ICOTS. He adds that, since Parole Board employees are issued laptop computers to assist with their assignments, and since OIT's policy covers access from remote locations, he should be able to work from home.[9] Further, the appellant states that Parole Board employees are authorized to take confidential material out of the office to work on at home, which is supported in an e-mail which he provides.[10] The appellant maintains that the appointing authority's explanation that he is not authorized to bring work home, while some employees are authorized to bring work home, is discriminatory.

Additionally, the appellant requests that the Commission re-review his allegations involving Y.G., J.H., B.H., L.G., and L.K.-H. Specifically, he reiterates that the prior decision did not address the incident where B.H. instructed the appellant not to take FMLA leave, and the allegations that Y.G. failed to follow Civil Service rules and law. He maintains that Y.G. is not a credible witness and she used the word "dicks," and no consideration was given to the fact that Y.G. was demoted. Therefore, he states that the Commission should disregard all of the statements provided by Y.G., J.H., B.H., L.G., and L.K.-H., since they are unreliable witnesses, and he requests to review the witness statements and the EEO/AA's investigative materials. As such, he reiterates that he is entitled to a hearing.

In response, the appointing authority states that the appellant incorrectly asserts that his assignments consisting of computer monitoring on ICAOS/ICOTS

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[6] S.B. notes that he is not arguing that the collective bargaining agreement was not followed

[7] Interstate Commission for Adult Offender System.

[8] Interstate Offender Tracking System.

[9] S.B. provides a copy of IT circular title 179 – "Remote Access Policy" effective February 9, 2012.

[10] The September 3, 2014 e-mail from S.D. to K.H. and T.M. indicates "[S.B.] will be picking up your files on Thursday and delivering them to me in Vineland. I will be delivering them to Trenton on Monday. I would appreciate it if the files would be outside when [S.B.] arrives. He will e-mail both [K.H.] and [T.M.] when he leaves SWSP."

may be performed from any location from any computer. In this regard, S.B. was advised in a December 16, 2013 letter from ADA coordinator J.H. that the SPB Information Technology Unit confirmed that access to those databases was not approved by the owners of ICAOS/ICOTS. Thus, the appellant's request to work from home was not an acceptable accommodation since he would have been unable to perform his duties from home. Further, the matter was previously addressed in the prior decision and it was determined that the appellant's reassignment was appropriate. In addition, the issues pertaining Y.G., B.H., J.H., L.G., and L.K.-H. were appropriately addressed in the prior matter and the appellant's arguments pertaining to confidential personnel actions of other State Parole Board employees, other than himself, without concern for the accuracy of those arguments, is inappropriate and should not be considered as they are outside the scope of this matter.

CONCLUSION

DISCRIMINATION APPEAL

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. Additionally, *N.J.A.C.* 4A:7-3.1(b) states that it is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

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 the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). *See N.J.A.C.* 4A:7-3.1(h).

N.J.A.C. 4A:7-3.2(m) states that a complainant who disagrees with the determination of the State agency head or designee may submit a written appeal within twenty days of the receipt of the final letter of determination. The appeal shall be in writing and include all materials presented by the complainant at the State agency level, the final letter determination, the reason for the appeal and the specific relief requested. *N.J.A.C.* 4A:2-1.1(a) states that all appeals shall be in writing, signed by the person appealing or his or representative and include the reason for the appeal and the specific relief requested.

Initially, the appellant conceded in his submission that his July 11, 2014 appeal of the June 4, 2014 determination letter was not filed in the required time frame. Therefore, the appellant's appeal is clearly untimely. The July 9, 2014 e-mail response by DARA staff did not extend the filing time frame and only suggested that he file his appeal and fee. There was no information in the e-mail as to when the determination the appellant wanted to appeal was issued, when he received it, or when the 20 day time frame would expire. As such, in no way can the e-mail be construed as extending the time frame in which to file this appeal. Regardless, in response, the appellant apparently filed his July 11, 2014 letter of appeal. However, the letter of appeal did not include all of the materials presented by the complainant at the State agency level, the final determination, the reason for the appeal, and the specific relief requested. Therefore, the appellant's appeal of the June 4, 2014 determination is untimely and, when it was filed, did not contain the necessary information in order to perfect the appeal.

Nevertheless, for informational purposes only, the Commission has conducted a review of the record and finds that the appellant has not established that he was retaliated against by J.H. for failing to provide him an accommodation and issuing disciplinary actions against him. *N.J.A.C.* 4A:7-3.2(m)1 requires that employees filing State Policy appeals which raise issues for which there is another specific appeal procedure to utilize those procedures. As noted earlier, the appellant may not appeal his disciplinary action since he is represented by the Communications Workers of America and he must pursue the disciplinary process as provided through his bargaining agreement. *See N.J.S.A.* 11A:2-14. Therefore, even if the appellant had filed a timely appeal of this determination, which he did not, he was required to pursue those matters through the grievance and disciplinary appeal process. As such, there is no basis on which to refer this matter for a hearing or to compel the appointing authority to provide the appellant with witness statements and other investigative materials in the adjudication of a written record appeal.

REQUEST FOR RECONSIDERATION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. 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 of the case and the reasons that such evidence was not presented at the original proceeding.

In this matter, the appellant has not satisfied the standard for reconsideration. The job duties listed by the Commission in its prior decision were taken directly from the definition and examples of work sections of the job specification for Senior Parole Counselor and capture the essence of the appellant's duties. Additionally, the appellant did not raise the issue of J.H. asking asserted inappropriate questions of his doctor regarding his ability to drive and his driver's license when reviewing his accommodation request. Regardless, even assuming that J.H. did ask questions concerning these issues, a question pertaining to the appellant's ability to drive, in and of itself, does not establish a violation of the State Policy. Given that the appellant indicated that the daily commute had aggravated his medical condition, purported questions pertaining to his ability to drive were reasonable in order to effectuate a proper accommodation. Further, there is no substantive evidence to show that any of J.H.'s questions were discriminatory or retaliatory under the State Policy. Although S.B. argues that J.H. improperly relied on the job specification for Senior Parole Counselor in order to formulate the questions, even assuming the validity of that statement, the job specification for Senior Parole Counselor does not indicate that a driver's license is required in order to serve in that title. Rather, it indicates that "appointees will be required to possess a driver's license . . . *only if the operation of a vehicle, rather than employee mobility, is necessary to perform the essential duties of the position.* Moreover, any delays in granting the accommodation requests cannot be solely attributed to retaliation and discrimination by J.H., given that the appellant acknowledges that he revoked the appointing authority's authorization to contact his doctor. Regardless, the appellant was required to provide medical documentation in support of his accommodation request and the failure to do so could have led to the denial of his accommodation request. *See in the Matter of Daniel Everett, Burlington County* (CSC, decided May 2, 2012).

Additionally, the appellant has not provided a scintilla of evidence to show that J.H. treated him differently from similarly situated employees. Although the appellant argues that other employees were authorized to work from "satellite offices" closer to their homes, even presuming the validity of that information, it does not substantiate the assertions that his condition warranted the same accommodation. In this regard, employees may be assigned to different work locations based on the legitimate business needs of the appointing authority. Moreover, the claim that another employee was authorized a reasonable

accommodation to avoid long distance travel does not establish a nexus to show that he was entitled to the same accommodation or that he was discriminated against. Indeed, every request for an accommodation is reviewed on a case-by-case basis.

Additionally, the appellant requests that the Commission defer the decision of this matter until his separate but related disciplinary action has been resolved in a separate forum. As previously noted, the appellant's disciplinary action cannot be considered in the context of this appeal since *N.J.A.C.* 4A:7-3.2(m)1 requires that employees filing State Policy appeals which raise issues for which there is another specific appeal procedure utilize those procedures. Regarding his reassignment, as noted in the prior decision, the appellant was issued a PNDA, had a departmental hearing, and was issued an FNDA upholding the charges and imposing a 10 working day suspension and reassignment. Thus, he was provided with notice of the charges and a hearing, which is sufficient to satisfy any due process or equal protection concerns.

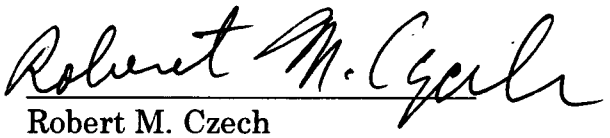
The appellant also requests the Commission to re-review the incidents involving Y.G., B.H., J.H., L.G., and L.K.-H. However, a review of the record in the instant matter reveals that reconsideration is not justified. S.B. has failed to provide any evidence that the Commission's decision was contrary to the evidence presented. In this regard, S.B. failed to provide any substantive evidence to show that a material error occurred, or any new evidence that would somehow change the outcome of the prior decision. *In the Matters of Joseph Inverso and Christopher Williams, supra,* was an appeal where two provisional employees requested to be converted into permanent employees and the fact that the Commission noted his position on that matter does not establish that he is more credible than the appointing authority or any of the other witnesses. In regard to the appellant's arguments that his duties could be performed from home, bringing work home to transport to another office on the following day does not establish that his condition warranted an accommodation of working from home. Regardless, the appellant has not provided any substantive evidence to refute the appointing authority's argument that it could not accommodate his request to work from home since the databases he would have to access are proprietary. Accordingly, S.B. has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this appeal and 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 29th DAY OF JULY, 2015



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CONFIDENTIAL

June 5, 2014

Sent Via Regular and Certified Mail
S[redacted] B[redacted]
[redacted]
[redacted]

Re: Discrimination Complaint
Division of EEO/AA File Nos. 2013-806, 2014-089 & 2014-090
SPB EEO File Nos. 2014-01; 2014-06; 2014-07

Dear Mr. B[redacted]:

The Division of the Equal Employment Opportunity/Affirmative Action ("Division of EEO/AA") has completed the investigation of your complaint(s) dated December 10, 2013, December 17, 2013 and February 18, 2014 against Mr. J[redacted] H[redacted], New Jersey State Parole Board ("SPB"), Manager of Employee Relations alleging retaliation for failing to provide an accommodation based on your disability and issuing disciplinary actions against you in the form of a Performance Notice of Counseling ("PNC") and a Preliminary Notice of Discipline recommending a 15 day suspension, in violation of the State Policy Prohibiting Discrimination in the Workplace. ("State Policy")

The complaint (#2013-806)[1] and two Unfair Practice Charges (2014-089 & 2014-090)[2] were referred to the Division of EEO/AA due to a conflict with the SPB's Equal Employment Opportunity Officer, L[redacted]-K[redacted] H[redacted] and the alternate EEO Officer. Therefore, Division of EEO/AA conducted a thorough and impartial investigation pursuant to the State Policy; this included interviewing witnesses and reviewing documentation. The Division of EEO/AA's investigation did not substantiate your allegations of retaliation.

I have reviewed the Division of EEO/AA's investigative report and adopt the findings as discussed below.

Retaliation-Denial of ADA Accommodation

Based upon the information obtained through witness interviews, independent reviews and statements, the Division of EEO/AA was unable to substantiate that Horan retaliated against you by denying your ADA accommodation requests.

You allege that you suffer from a condition referred to as Ankylosing Spondylitis. The EEO investigation reveals that on September 12, 2013, you submitted a request for an accommodation pursuant to the American

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[1] *You had originally named D[redacted] M[redacted], Personnel Assistant 1, but voluntarily withdrew the complaint against her on April 10, 2014.*

[2] *On February 28, 2014, you acknowledged your internet access to the CWA website had not been intentionally blocked by the SPB and the inability to access the website was as a result of a "Domain Name Server." Therefore, this issue was not investigated by the Division of EEO/AA.*

with Disabilities Act ("ADA") in which you claim your driving commute to Trenton and back home, to South Jersey, approximately 180 miles a day, had aggravated your condition resulting in back pain. As a result, you requested to work from home three days a week and report to Trenton or Central Office two days a week.

The EEO investigation reveals H[redacted] is the SPB's ADA Coordinator and was therefore responsible for reviewing your accommodation request. During the interactive process, your physician, Dr. Stephen Soloway, M.D., indicated your symptoms could be addressed by having an opportunity to stop and stretch and/or sit when necessary during the commute into work and home. In addition, the EEO investigation reveals that during the interactive process H[redacted] looked into the feasibility of your ability to work from home. The investigation reveals that working from home was not a viable option because (1) of the confidentiality of the files; (2) lack of supervision (3) inability to access certain SPB databases and; (4) because you had been assigned to Trenton for disciplinary reasons. The investigation reveals that based on the documentation received from your doctor, you were notified on October 31, 2013, that the Reasonable Accommodation Committee which included, L[redacted]-K[redacted] H[redacted], S[redacted] D[redacted], and L[redacted] W[redacted] and H[redacted], agreed to grant an accommodation that provided you with "flex time" to start work between 7:00AM and 10:00AM, adhering to the required seven hour day. This would give you the time to stop and stretch as needed.

The EEO investigation reveals that you submitted a second request dated November 18, 2013, based on your opinion that the accommodation granted was not working. Therefore you re-instated your original request, to work from home three days or week or be reassigned to a location closer to home. The EEO investigation reveals that in order to properly consider your request H[redacted] sought additional medical information from your doctor. The EEO investigation reveals you objected to the questions regarding your ability to operate a motor vehicle and as a result withdrew your medical authorization form. Consequently, on December 16, 2013, your request for reconsideration was denied because: (1) you did not provide the necessary medical documentation and revoked your medical information release form which is required by the agency's reasonable accommodation manual and part of the reasonable accommodation form; (2) your supervisor stated that there were a number of required databases you would need in order to complete the work and according to IT you could not gain access to all of the necessary databases from home because they are not supported; (3) You were reassigned to the Central Office as a result of two incidents of insubordination. The result was a permanent reassignment to the Office of Interstate Services, DO #20 at Central Office as a Senior Parole Counselor for two years or until August 23, 2014; and (4) your supervisor's concerns with her ability to supervise you from home as well as the manner in which you would handle confidential materials.

The evidence shows that you submitted a third request for an accommodation on December 20, 2013 and on January 17, 2014, the Reasonable Accommodation Committee met regarding your request and denied same. The reason given was; "no new medical information has been provided, therefore, denied for all the reasons previously stated to Mr. B[redacted] on December 16, 2013."

On January 24, 2014, you submitted an updated medical note from Dr. Brian Joseph Davis D.O., your primary care physician. The note specified "S[redacted] suffers from Ankylosing Spondylitis, a chronic and painful spinal condition. Long drives in a car will aggravate symptom. Please limit to 300 miles per week" and on February 6, 2014, the Reasonable Accommodation Committee denied the request. The denial was based on the following:"(1) no HIPPA waiver as required; (2) no parole counselor position at any District office; (3) disciplinary restriction at Central Office; (4) can't perform OIS duties at home as previously explained in prior correspondence to Mr. B[redacted]." Consequently, the EEO investigation reveals that on February 11, 2014, you sent an email to the Office of Employee Relations authorizing and allowing them to contact your Doctor for further medical information. The Reasonable Accommodation Committee met on February 28, 2014, and based on the new medical information received and an available position, the committee granted an alternative accommodation. The record shows you were reassigned to South Woods State Prison as a Senipr Parole Counselor effective March 3, 2014. You admitted and the documents corroborate that you agreed and are grateful for the provided accommodation.

H[redacted] defended his initial decision regarding a reassignment to a location closer to B[redacted]'s home. H[redacted] explained that you were informed of these limitations and told "the agency is not required to create a position

to accommodate an employee's request."

H[redacted] explained that in or around the end of February 2014, a position for a Parole Counselor became available at South Woods State Prison due to an employee going out on a medical leave of absence. The position was ultimately offered to you and you accepted as part of the accommodation process.

Furthermore, the investigation reveals that there are no similarly situated or comparable employees who have either requested or been accommodated to work from home.

The EEO investigation reveals that in this instance the medical records provided show you have a medical condition that the SPB determined required and could accommodate. A legal analysis would be inappropriate however, the guidelines are clear that an employer does not have to provide the requested accommodation but only a reasonable accommodation that does not impose an undue hardship. Undue hardship is defined as an action requiring significant difficulty or expense. In addition, if there is more than one accommodation available then the employer can select the accommodation that the employer may choose the one that is less costly or that is easier to provide. The State Policy prohibits an employer from taking any adverse employment action as a result of, in this case, you having filed a prior EEO complaint against H[redacted]

Based on the review of all the relevant documentation reveals your accommodation requests were properly evaluated. The evidence shows that H[redacted] fully engaged in the interactive process seeking, legal guidance from the Division of Law, medical information as necessary, input from your supervisor and the IT unit regarding access to SPB databases and reviewing your job duties and responsibilities. Moreover, the evidence reveals that on October 31, 2013, you were provided an accommodation that was based on the recommendation of your doctor with the use of "flex time." Albeit the accommodation may not have been to your liking but it was provided after an extensive evaluation by H[redacted]. In addition, the evidence shows that after the SPB had received the proper medical documentation and a position became available, as you requested, you were reassigned to a location closer to your home. Therefore, The EEO investigation fails to substantiate your allegation of retaliation for failing to provide an accommodation in violation of the State Policy.

Retaliation-Discipline

You also allege H[redacted] retaliated against you based on being issued a PNC on December 10, 2013 and a Preliminary Notice of Discipline dated January 29, 2014, recommending a 15 day suspension.

The EEO investigation reveals the PNC was issued by your then supervisor, Lieutenant R[redacted] O[redacted] for violating the SPB Code of Professional Conduct on December 5, 2013 when you sent H[redacted] an email using the word "BULLSHIT." The EEO investigation failed to substantiate the PNC was issued in retaliation for your prior EEO complaints in violation of the State Policy.

The EEO investigation further reveals that the Preliminary Notice of Discipline was issued for engaging in personal internet activities during normal work hours. The evidence shows that you and your union representative met with H[redacted] on September 6, 2012, regarding your use of the internet while at work. At that time, you were advised that you were only permitted to use the internet for personal reasons during break time. You signed an acknowledgment form regarding the use of the internet. Specifically it reads; "My obligation to come to work and focus on and perform my work duties to the best of my ability during my scheduled work hours, My obligation to adhere to the agency's policies on internet activity and email use, which are maintained for official business use only and which prohibits any personal use unless it is of de minimus (very minor) nature." Furthermore the investigation reveals on December 6, 2013, the SPB issued a reminder memo to all employees regarding, "Appropriate Computer Usage-General Reminder Notice."

The EEO investigation reveals you were issued the disciplinary notice based on your violation of your agreement dated September 6, 2012, and the SPB Internet Usage Policy which was reissued on December 6, 2013. The Preliminary Notice of Disciplinary Action reads: "You were cautioned by DPS O[redacted] not to engage in personal activity while you are on the clock, but to handle any personal activity during your break or lunch time. You submitted an OPRA request on January 27, 2014 at 2:30:15pm which is outside the time frames for

the break times established for your Unit, and your lunch should have been taken prior to the 2:00pm lunch. The OPRA request had nothing to do with your official work duties in OIS." The EEO investigation reveals the recommendation for discipline was originally initiated by Lt. O[redacted] and was referred to H[redacted] as the Employee Relations Manager by his supervisor for further action.

The EEO investigation failed to substantiate your complaint of retaliation against H[redacted] based on the issuance of disciplinary action in violation of the State Policy.

Conclusion

The EEO investigation did not substantiate your allegation that H[redacted] denied your request for an accommodation in violation of the State Policy. In fact the investigation reveals H[redacted] properly engaged in the interactive process and ultimately after the SPB received updated medical information and a position became available you were reassigned to a location closer to home, an accommodation you requested.

In addition, the EEO investigation failed to reveal any retaliatory animus for the issuance of the PNC for violating the SPB's Code of Conduct or the Preliminary Notice of Discipline for violating the SPB's Internet Usage Policy. Therefore no further action is recommended.

If you disagree with this determination, you have the right to file an appeal with the New Jersey Civil Service Commission within 20 days of your receipt of this letter. The burden of proof is on the Appellant. The appeal must be in writing, state the reason(s) for the appeal and specify the relief requested. All materials presented at the department level and a copy of this determination letter must be included. The appeal should be submitted to the NJ Civil Service Commission, Director of the Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, NJ 08625-0312. Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a $20 fee for appeals. Please include the required $20 fee with your appeal. Payment must be made by check or money order, payable to the "NJ CSC." Persons receiving public assistance pursuant to 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, participates in a complaint investigation or opposes a discriminatory practice. In addition, all aspects of the EEO complaints, investigations and determinations are considered highly sensitive and must be kept confidential. You should not discuss this matter, including its outcome, with anyone who does not have a legitimate business reason to know of it. If you have any questions please contact L[redacted] K[redacted] H[redacted], EEO Officer, SPB at (609) 984-6256.

Sincerely,

David W. Thomas
Executive Director

C: Mamta Patel, Esq., Director, Division of EEO/AA. Civil Service Commission
Lise-Kirsten Higgins, EEO Officer
File

JUL 22 2014

STATE OF NEW JERSEY

In the Matter of S.B.,
State Parole Board

CSC Docket Nos. 2013-383, 2013-431,
2013-651, 2013-917

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Discrimination Appeals
Reassignment Appeal

ISSUED: JUL 21 2014 (JET)

S.B., a Senior Parole Counselor, State Parole Board, appeals the attached determinations of the Executive Director, which found that the appellant failed to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). The appellant also appeals his reassignment. Since these matters concern similar issues, they have been consolidated herein.

In July 2011, the appellant filed a request for a reasonable accommodation due a medical regimen that makes him excessively sweat. The appellant requested that he be permitted to wear clothing that is not tight or restrictive to his neck when he is required to work at Central Office in Trenton.[1] In response to his request, the appointing authority's Reasonable Accommodation Committee (Committee) provided the accommodation of permitting the appellant to wear his neck-tie loose from his neck and without a sports coat or suit jacket. The appellant appealed this determination to the Civil Service Commission (Commission) and this agency's Division of Equal Employment Opportunity/Affirmative Action (EEO/AA) advised him that the appointing authority's Committee agreed to reconsider his request in light of the appeal. Thereafter, it was determined that the appellant was to be provided with an additional accommodation of a fan.

[1] At the time of this request, the appellant's work location was Bayside State Prison. However, his duties would occasionally require him to travel to work at Central Office in Trenton.

Subsequently, in March 2012, the appellant filed a complaint with the appointing authority's Equal Employment Opportunity Unit (EEO) alleging a violation of the State Policy on the basis of sex/gender. The appellant claimed that Y.G., a Hearing Officer 3, swore, used inappropriate language and conduct toward him, proposed changes in office procedure based on sex/gender, and that she stopped bringing breakfast food to staff meetings. The EEO investigated the appellant's complaints by interviewing witnesses and determined that Y.G. used inappropriate language in the workplace, such as "shit," "damn," or "hell" and recommended that she be counseled for the use of such language, but that these were not violations of the State Policy. Further, the investigation found that there was insufficient evidence to substantiate the remainder of the appellant's complaints. In August 2012, the appellant filed a subsequent complaint with the EEO asserting that B.H., a Regional Supervisor, retaliated against him for filing an appeal with the Commission regarding his prior complaint against Y.G. Specifically, the appellant claimed that B.H. retaliated against him by changing the work hours for the appointing authority's offices located at Bayside State Prison after it was determined that staff were not complying with the time and attendance policy. The EEO determined that B.H. was not provided with notice of the appellant's appeal to the Commission. Therefore, the investigation found no evidence to support the appellant's contention that B.H. acted in retaliation for having filed a complaint against Y.G.

In July 2012 and September 2012, the appellant filed complaints against B.H., J.H., Manager, Employee Relations, and L.G., Deputy Executive Director, alleging discrimination based on sex/gender, disability, and retaliation. He filed another complaint on March 7, 2013 against W.S., a District Parole Supervisor. The appellant asserted that B.H. and Y.G. ignored him but greeted everyone else when arriving to work in the morning, would "whisper" about him on a daily basis, that L.G. told him that he would have problems being promoted due to his filing of EEO claims, and that L.G. referred to Y.G.'s gender during a conversation. The appellant also claimed that J.H. retaliated against him by auditing his internet access and that J.H. and Y.G. discriminated against him based on his disability by referring to him as "red-faced." With respect to the complaint against W.S., the appellant contended that he failed to report alleged inappropriate comments about his disability made by B.H. and Y.G. during a disciplinary hearing. This agency's EEO/AA investigated the complaint as J.H. was familiar with the appellant's prior complaints. However, the EEO/AA advised the appellant that it would not investigate his assertion that J.H. offered him a settlement agreement for a 30 day suspension in exchange for a waiver of claims against the appointing authority, that he received a Preliminary Notice of Disciplinary Action (PNDA) for a 10 day suspension, a PNDA for a 3 day suspension, a poor performance review and a two year reassignment from Bayside State Prison to Trenton in retaliation for filing prior EEO complaints, that Y.G. purposefully attempted to remove males from her supervision, and that Y.G. violated his privacy by going through his shredding bin

as they did not implicate the State Policy. The EEO/AA also found that W. S. reported the comments made by B.H. and Y.G. during the appellant's disciplinary hearing and that they received counseling. Therefore, it would not take further action on that matter. However, the other matters were investigated but the EEO/AA was unable to substantiate any violations of the State Policy.

In a Preliminary Notice of Disciplinary Action (PNDA) dated September 2, 2012, the appellant was charged with insubordination, conduct unbecoming, other sufficient cause, and threatening, coercing or harassing another employee on State property. Specifically, it was asserted that on August 22, 2012, Y.G. requested that the appellant move his trash can and that shortly after this request was made, the appellant approached Y.G.'s cubicle red-faced and verbally challenged her directive. The recommended penalty was a 10 working day suspension and reassignment to Central Office in Trenton for two years or until August 23, 2014. The charges were sustained and the recommended penalties were adopted by the appointing authority in a Final Notice of Disciplinary Action (FNDA) dated February 23, 2013.

On June 10, 2013, the appellant filed a complaint alleging retaliation. Specifically, he asserted that Y.G.'s judgment toward offenders was impaired due to her fear of individuals with mental disorders, made reference to him having a red face, that W.S. relied on biased testimony from B.H. and Y.G. in his determination of the outcome of a disciplinary hearing, and that W.S. used testimony from J.H. regarding his reasonable accommodation request regarding the outcome of his disciplinary hearing. The EEO reviewed the relevant documentation and interviewed witnesses but was unable to substantiate a violation of the State Policy.

In September 2013, the appellant, who at this time had been reassigned to Central Office in Trenton from Bayside State Prison, requested a reasonable accommodation to work in an office closer to his home. In order to address his request, the appointing authority provided the appellant with a flexible start time which permitted him to arrive at work at Central Office between 7 a.m. and 10 a.m. so he could stop, get out of his car, and stretch during his commute to work. Thereafter, in November 2013, the appellant requested that he be permitted to work at home. The appointing authority denied this request because the appellant contacted its Employee Relations Unit and instructed it not to have contact with his doctor. As such, the appellant's request was denied because there was no medical documentation available in support of his request. Nevertheless, the appointing authority advised the appellant that even if he reinstated his request by permitting contact with his doctor, it could not approve the request. Specifically, the appointing authority explained the appellant would not have access to the required computer databases even if he were provided with an agency issued lap-top computer, that his disciplinary history raised concerns if the appellant was the type of employee who could be trusted to work at home under minimal supervisory oversight, that the files he is required to work on contain confidential/sensitive

information which is not the type of information to be trusted at home, and that the lack of supervisory oversight would impact his production.

ACCOMMODATION APPEALS

The appellant asserts that the reasonable accommodation of allowing him to wear his neck tie loose from his neck and without a sport coat or suit jacket and providing him a fan when he works at Central Office is ineffective since it is overly restrictive and his personal physician requested the appointing authority to allow him to wear non-restrictive clothing around his neck. The appellant adds that the accommodation is improper since he is treated differently from other individuals with disabilities at work. In addition, the appellant contends that his accommodation does not comply with the Americans with Disabilities Act (ADA) or with the appointing authority's policies regarding reasonable accommodations. In this regard, the appointing authority requires him to follow the dress code and he is required to wear a shirt and tie even though it does not accommodate his disability. The appellant notes that when he works at Bayside State Prison, he is not required to wear a shirt and tie as it is not safe to wear a tie while working with inmates. Rather, when working at Bayside State Prison, he is permitted to wear a polo shirt. As such, by wearing a polo shirt when he works at Bayside State Prison, his condition has been manageable. However, given that his medications cause him to experience various side effects at work when he wears restrictive clothing or when the room temperature rises, he maintains that he should be permitted to wear a polo shirt when he is required to work at Central Office.

With respect to the November 2013 request to work from home, the appellant states that his doctor supported the request, but the appointing authority sent the doctor a letter which was irrelevant to his accommodation request. Therefore, he revoked his authorization for the appointing authority to contact his doctor. Although the appointing authority's December 16, 2013 response denying his request contains several explanations as to why it cannot be granted, the appellant contends that this denial is evidence of the continuation of retaliation against him for filing various complaints. As such, he contends that denying his requests for a reasonable accommodation is essentially a form of discipline and he requests an effective accommodation.

In response, the EEO asserts that it provided the appellant reasonable accommodations based on the medical information provided by the appellant. With respect to his June 2011 request, the appellant was allowed to adjust his clothing and to use a fan on the occasions when he was required to work in Central Office. In this regard, the Committee reviewed the medical documentation provided by the appellant's personal physicians and the accommodation authorized the appellant to use a fan, unbutton his shirt, and loosen his tie. Moreover, the appointing authority notified the appellant that the accommodation could be adjusted if he provided

additional medical documentation. Regarding his November 2013 request to work from home, the EEO states that the appellant requested a different accommodation from what was recommended by his physician and he failed to provide additional medical documentation or to divulge all of his medical conditions in support of his request.

In reply, the appellant states that he filed a request for a reasonable accommodation on September 12, 2013 because he has ankylosing spondylitis. The appellant adds that the commute to the Central Office from Millville aggravated this condition and so he requested to work from home instead of commuting to work. Further, the appellant asserts that the reasonable accommodation that was authorized, *i.e.*, a flexible start time so he could get out of his car and stretch, is not effective due to the long commute. The appellant also claims that when the appointing authority telephoned his physician's office for information about his condition, it asked several inappropriate questions.

The EEO responds, explaining that it granted the appellant's accommodation request by providing him a flexible start time to arrive to work based on his medical condition and the commute. However, the appellant did not provide any medical documentation in support of his request to work from home. In this regard, the EEO indicates that it sent a letter to the appellant's physician on November 25, 2013 and the appellant subsequently revoked the medical authorization on December 5, 2013 to contact his physician. Thus, the EEO/AA contends that the appellant's accommodation request to work from home was denied.

DISCRIMINATION APPEALS

The appellant maintains that that he was subjected to sex/gender discrimination by Y.G. in violation of the State Policy. Specifically, the appellant asserts that when he was reassigned to Central Office for two years starting in August 2012, he left a box of shredding behind at Bayside State Prison and Y.G. searched the contents of the box. In this regard, he claims that Y.G. and J.H. searched through the box and the appellant's e-mail account to obtain information to use against him in retaliation for filing various EEO complaints. Further, the appellant avers that he was discriminated against when Y.G. and J.H. referred to him as "red-faced" and Y.G. would often refer to men as "dicks." The appellant adds that L.G.'s reference to Y.G.'s gender during a meeting on August 23, 2012 was an inappropriate reference to her gender. In addition, the appellant states that on April 12, 2012, B.H. telephoned the EEO Office and asked to speak to him while he was in a meeting with EEO Officer L.K.-H. The appellant also questions if the letter he received from this agency's EEO/AA dated May 6, 2013 regarding an anonymous tip he received concerning Y.G. and B.H. was not investigated is correct.

Additionally, the appellant asserts that L.G. possessed confidential e-mails that were submitted to L.K.-H. and to J.H. The appellant states that L.G. was provided with the e-mails in violation of confidentiality provisions of the State Policy. The appellant indicates that L.G., L.K.-H. and J.H. should be disciplined for their violations of the State Policy. Further, the appellant contends that Y.G. and B.H. ignored him on several occasions and they would say hello to S.M., a Senior Parole Counselor, State Parole Board, when they arrived at work. The appellant adds that such behavior did not occur before he filed an EEO complaint. In addition, the appellant overheard constant whispering between Y.G. and B.H. which did not occur before he filed the EEO complaint. The appellant adds that Y.G. admitted to whispering about employees including the appellant which should have established that there was a violation of the State Policy. The appellant also questions why the EEO did not identify what the whispering was about. Further, the appellant asserts that he noticed that his e-mail system was running slow before he was reassigned. He also learned that Y.G. was bragging about how the appointing authority gave her access to read his e-mails. The appellant states that Y.G. became angry at him after she read one of his e-mails and confronted him about the placement of his trashcan.[2] Moreover, Y.G. did not inform the appellant that he was not authorized to use sick leave after the incident occurred on February 16, 2012. In this regard, the appellant claims that Y.G. frequently used sick time and he questions if he is the only employee who is required to produce a doctor's note when he is absent from work. The appellant adds that Y.G. and B.H. were not properly disciplined for their inappropriate conduct during his departmental hearing and they should have received more than just a verbal counseling. Moreover, the appellant contends that the EEO/AA's investigation was not fair or impartial, that the EEO/AA did not interview all of the witnesses, and the appointing authority uses confidentiality rules of the State Policy to hide the inappropriate actions of its employees. Therefore, since the appointing authority has previously "hidden" information from the Commission, the appellant states that he cannot present a proper appeal and the Commission cannot make a proper decision without reviewing "all the information."

In response, the EEO maintains that there was no violation of the State Policy and there was no evidence that the appellant was discriminated against on the basis of his gender. The EEO asserts that Y.G. was reassigned to the appellant's unit with specific instructions to change the working conditions of the unit. In this regard, Y.G. was aware that the appellant's unit was disruptive when she was reassigned and the appellant hindered her efforts to make changes to the unit.[3] The EEO adds that the appellant amended the EEO complaint and alleged that Y.G. treated him differently from other male employees. Further, the

[2] The appellant indicates that this confrontation led to his disciplinary action and ultimate reassignment to the Central Office.

[3] Y.G. indicated that the appellant's behavior was aggressive and could not be tolerated.

witnesses did not confirm that Y.G. referred to men as "dicks" or that she treated women more favorably than the appellant.[4] The EEO indicates that the investigation did not substantiate that Y.G. was aware that the appellant has a medical condition that causes him to become red-faced. In this regard, Y.G. stated that the appellant was red-faced in order to describe his facial expression during the incident of August 22, 2012. Further, the witnesses confirmed that Y.G. and B.H. greeted staff in a general statement at the time they arrived at work. The EEO adds that there is no requirement that supervisors must personally greet employees when they arrive at work.

The EEO also states that Y.G. admitted to whispering with B.H. about employee relations matter and none of the witnesses corroborated that the whispering was about the appellant. In addition, Y.G. conducted a review of the shredding material the appellant left at Bayside State Prison after he was reassigned in order to determine if it contained any essential work-related documentation. Further, B.H. and Y.G. were properly counseled as a result of their inappropriate reference to individuals with disabilities during the appellant's departmental disciplinary hearing and J.H. was aware of the appellant's accommodation requests due to his responsibilities as ADA Coordinator. Thus, J.H. did not use the term red-faced in violation of the State Policy. J.H. also indicated that the appellant left non-work related printouts at his former workstation and he extensively used the Internet which was not related to his work.

Additionally, the EEO states that B.H. contacted the EEO on April 10, 2012 while the appellant was in a meeting with EEO Officer L.K.-H. because he did not return to Bayside State Prison and he was unaware of the appellant's location. The EEO adds that the appellant's former supervisor at Bayside State Prison did not notify Y.G. or B.H. where the appellant was located and B.H. contacted several units while he was looking for the appellant. Thus, the investigation did not substantiate that B.H. violated the State Policy since there was complete confusion regarding the appellant's whereabouts. Moreover, L.K.-H. did not disclose the purpose of the meeting when B.H. called for the appellant at her office.

In addition, L.G.'s reference to Y.G.'s gender could not be corroborated as a violation of the State Policy. The EEO confirms that L.G. had personal knowledge of the appellant's concerns because he was a party to a conference with the appellant's union officials and he was provided with a printout of a number of e-mails that were sent to J.H. and L.K.-H. However, at no time did he have access to the appellant's e-mails that were directed to the EEO. It also could not be substantiated that L.G. attempted to hinder the appellant from promotional opportunities. Thus, the fact that L.G. possessed a printout of various non-EEO related e-mails did not violate the State Policy. Further, the EEO states that the

[4] The male employees were interviewed and they did not corroborate the appellant's allegations.

appellant experienced issues with every one of his supervisors until he was reassigned to the Central Office. The EEO adds that the appointing authority has cause for concern as the appellant has a practice of walking off the job, which is disruptive to the workplace. Finally, there was no evidence that information from the appellant's EEO complaints or his requests for reasonable accommodations were used against him during the departmental hearing.

REASSIGNMENT APPEAL

The appellant asserts that he was reassigned in bad faith as an act of retaliation.[5] The appellant argues that Y.G. lied at the departmental hearing when she stated that she was afraid of the appellant and the witnesses confirmed that she was not scared of him. In addition, the hearing officer determined that there was no evidence of workplace violence. He also alleges that he was reassigned due to the accommodation requests and EEO matters. In this regard, he claims that the appointing authority used confidential information against him during the departmental hearing to reassign him. Further, he asserts that the appointing authority did not inform him that his reassignment was disciplinary in nature until after it was contacted by his union representative. The appellant contends that he received a letter dated August 23, 2012 indicating that he was reassigned as a result of the placement of his waste basket and the operational effectiveness of the workplace. Further, the appellant asserts that he was reassigned as part of a major disciplinary action and he was not provided with a hearing. As such, he argues that he was involuntarily reassigned to the Central Office, which is 90 miles away from his home, which is a severe hardship that has aggravated his medical conditions. The appellant adds that the reassignment should only have been for six months and the appointing authority later told his union representative that it was permanent for disciplinary reasons. The appellant also questions why he was reassigned for two years.

In response, the EEO states that the appellant cannot properly challenge his reassignment in this matter as it is a part of his disciplinary action that may be properly addressed in the disciplinary process as outlined in his bargaining agreement.

CONCLUSION

ACCOMMODATION APPEALS

The Americans with Disabilities Act (ADA) is a federal statute designed to eliminate discrimination against individuals with disabilities. 42 *U.S.C.A.* § 12101;

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[5] As an employee represented by the Communications Workers of America, the appellant may not appeal disciplinary actions to the Civil Service Commission. *See N.J.S.A.* 11A:2-14.

See also, Jones v. Illinois Cent. R. Co., 859 *F. Supp.* 1144 (N.D. Ill. 1994). State courts have concurrent jurisdiction with federal courts over ADA claims; however, existence of such concurrent jurisdiction does not alter the fact that ADA actions are federal question cases. *Jones v. Illinois Cent. R. Co., supra.* The Commission may review ADA issues collaterally when they are implicated in an appeal properly before it, such as in a disciplinary action or in a discrimination appeal. *See Matter of Allen*, 262 *N.J. Super.* 438, 444 (App. Div. 1993); *In the Matter of John Soden* (MSB, decided September 10, 2002) (noting that jurisdiction was proper when the ADA was implicated as a defense to a disciplinary removal properly before the Merit System Board (Board)); *In the Matter of Michael Giannetta* (MSB, decided May 23, 2000) (Board may apply the ADA in deciding an issue concerning removal from an eligible list). *Compare, In the Matter of Michael Tidswell* (MSB, decided August 9, 2006) (Board remanded the appellant's request for a reasonable accommodation to the appointing authority for further investigation regarding possible violations of the State Policy).

In regard to discrimination matters, *N.J.A.C.* 4A:7-3.2(m) allows a complainant in the State career, unclassified or senior executive service, or an applicant for employment, who disagrees with the determination of the (State agency head or designee), to submit a written appeal within 20 days of the receipt of the final letter of the determination from the (State agency head or designee), to the Commission. The appellant shall use the procedures set forth in *N.J.A.C.* 4A:7-3.2.

Under the ADA, the term "reasonable accommodation" means (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. A reasonable accommodation may include, but is not limited to: (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring: part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training, materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. *See* 29 *CFR* § 1630.2(o) (1999). Further, the ADA requires that, where an individual's functional limitation impedes job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose undue hardship on the employer. *See* 29 *CFR* § 1630.2(p). Such accommodations usually take the form of adjustments to the way a job customarily is performed, or to the work environment itself. This process of identifying

whether, and to what extent, a reasonable accommodation is required should be flexible and involve both the employer and the individual with the disability. No specific form of accommodation is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential function. The ADA does not provide the "correct" answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. *See* 29 *CFR* § 1630.2(o) and 29 *CFR* § 1630.9.

As evident from the above summary, the ADA contemplates an interactive process between the employee and employer whenever an employee's disability may impact his or her ability to perform the essential functions of the position. It must be emphasized that the ADA does not necessarily give an employee the right to demand and receive a specific accommodation if he or she can still perform the essential functions of the position. *See In the Matter of Karen Kritz* (MSB, decided January 25, 2006). In the instant matter, the record reflects that the appellant requested and received numerous accommodations to assist him in the performance of his duties. The appellant was permitted to unbutton his top button, loosen his tie, and to use a fan on those days he was required to work in Central Office prior to his long term reassignment to that office. The appellant also admitted that he was permitted to wear polo shirts when his work location was at Bayside State Prison and that this managed his condition.

Additionally, the record reflects that the appointing authority granted a reasonable accommodation which allowed the appellant a flexible schedule to arrive at work based on his commute to the Central Office and his medical condition. This accommodation allowed him to stop and stretch during the commute and to adjust his work hours. Although the appellant submitted another request to allow him to work from home, the medical documentation did not support that the appellant could not perform his duties based on the commute and his medical condition. Further, the appellant revoked the appointing authority's authorization to contact his physician after he made the request to work from home. Thus, without sufficient medical documentation, the appointing authority was unable to address the appellant's request to work from home. Further, even if such medical authorization was provided, the appointing authority detailed numerous reasons, such as the confidential information included in the files and the inability to connect him with the required databases to perform his work on a laptop computer, that would have precluded it from being able to permit him to work from his home.

Based on a review of the record, the appointing authority did not unreasonably deny the appellant's request for an accommodation. In this regard, it is noted that in providing an accommodation, an employer does not have to eliminate an essential function or fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or

without a reasonable accommodation, is not a "qualified" individual with a disability within the meaning of the ADA. *See* 29 *C.F.R.* 1630.2. *See also, Ensslin v. Township of North Bergen,* 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied,* 142 *N.J.* 446 (1995) (No reasonable accommodation of Police Sergeant's disability would permit him to perform essential functions of job, and thus the township did not violate the New Jersey Law Against Discrimination by terminating the Sergeant after he was rendered paraplegic in skiing accident); *Albertson's Inc. v. Kirkingburg,* 527 U.S. 555 (1999) (Truck driver with monocular vision who failed to meet the Department of Transportation's visual acuity standards was not "qualified" individual with a disability under the ADA). Clearly, the record establishes that the duties of a Senior Parole Counselor include, among other things, reviewing and maintaining inmate case files, calculating parole eligibility dates and scheduling parole hearings for inmates. This includes providing assistance to the Parole Board Panel prior to and during panel hearings; preparing case files and other relevant materials, verifying that all pre-hearing processes have been completed, ensuring that recording equipment is operational, and that the panel hearing proceeds according to State and Agency rules and regulations. The appointing authority has established that it would be unable to permit the appellant to perform these duties from his home.

DISCRIMINATION APPEALS

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. Additionally, *N.J.A.C.* 4A:7-3.1(b) states that it is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

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 the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an

activity or privilege offered or provided to all other employees). *See N.J.A.C.* 4A:7-3.1(h).

Initially, the appellant claims that he cannot write a proper appeal and the Commission cannot make a proper decision in these matters since the appointing authority has previously "hidden" information from the Commission. In other words, it appears that the appellant is requesting the investigative reports in these matters. However, in light of the voluminous and detailed submissions received from the parties, particularly the thorough and detailed summary of the investigation prepared by the appointing authority, the Commission does not find it necessary to compel production of the investigation report 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. *See In the Matter of Juliann LoStocco, Department of Law and Public Safety,* Docket No. A-0702-03T5 (App. Div. October 17, 2005); *In the Matter of Salvatore Maggio* (MSB, decided March 24, 2004).

The Commission has conducted a review of the record in these matters and finds that that the EEO/AA conducted adequate investigations. It interviewed the relevant parties and reviewed the appropriate documentation and could not substantiate violations of the State Policy. Although the appellant argues that Y.G., B.H., W.S., and J.H. discriminated against him or retaliated against him for filing previous EEO complaints, none of the witnesses could substantiate his allegations. The record reflects that the EEO/AA interviewed Y.G. and the witnesses and it was not substantiated that the appellant was discriminated against on the basis of his gender or that he was subjected to retaliation in violation of the State Policy. Further, it appears that the appellant had a personality conflict with Y.G. in connection with his work which is not evidence of discrimination. In this regard, 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). Thus, the fact that Y.G. instructed the appellant to place his trashcan in his cubicle is not evidence of a violation of the State Policy.

In addition, the witnesses did not corroborate the allegations that Y.G. showed favoritism to women or that she referred to men as "dicks." Although the record reflects that Y.G. reviewed the appellant's shredding materials, that action, in and of itself, is not evidence of a violation of the State Policy. In this regard, Y.G. had a legitimate business reason for reviewing the shredding materials. Moreover, there is no evidence that Y.G. read his e-mails without a legitimate business reason in violation of the State Policy. Although Y.G. and B.H. admitted that they whispered, they confirmed that such behavior was regarding work related issues. Additionally, even if Y.G. and B.H. did not say hello to the appellant when they arrived at work, this does not establish that he was discriminated against.

Moreover, Y.G.'s reference to the appellant as "red-faced" was descriptive of how he looked during the incidents that occurred in February 2012 and August 2012. Although Y.G. was aware that the appellant was granted a reasonable accommodation, the record does not reflect that Y.G. was aware that his medical condition would cause him to become red-faced. Thus, Y.G.'s reference to the appellant as red-faced was not a violation of the State Policy.

Additionally, the record does not reflect that L.K-H., L.G., or J.H. discriminated or retaliated against the appellant in violation of the State Policy. Further, there is no evidence that there was a violation of the confidentiality provisions of the State Policy when B.H. telephoned L.K.-H. during a meeting on April 10, 2012. In this regard, the investigation found that the appellant did not return to Bayside State Prison after his assignments were completed so B.H. called different work units to ascertain the appellant's whereabouts. Further, L.K.-H. did not disclose the subject matter of her meeting with the appellant to B.H. Thus, the record reflects that B.H. telephoned L.K.-H. during the meeting for legitimate business reasons. Additionally, there is no evidence that L.G. possessed confidential e-mails that were sent by the appellant to other individuals. The appointing authority confirms that L.G. possessed printouts of e-mails that were not related to the appellant's EEO matters. J.H. also confirmed that he was aware of the appellant's disabilities as ADA Coordinator and he used the term "red-faced" within the context of the appellant's EEO matter. Thus, J.H.'s use of the term "red-faced" did not violate the State Policy. Moreover, J.H.'s finding that the appellant improperly used the Internet did not evidence that he was subjected to retaliation.

In regard to the appellant's concerns that Y.G. and B.H. violated the State Policy when they referred to individuals with disabilities during his departmental hearing, these comments were in fact reported and it was found that they were inappropriate. However, corrective action was taken since they were counseled about the matter. Moreover, the fact that Y.G. and B.H. made these comments during the appellant's departmental hearing does not substantiate the appellant's other allegations against them. Regardless, the appointing authority has already issued letters of counseling to B.H. and Y.G. as corrective measures and no further action is necessary.

REASSIGNMENT APPEAL

N.JA.C. 4A:4-7.2 defines a reassignment as the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit, which shall be made at the discretion of the head of the organizational unit. *N.J.S.A.* 11A:4-16 and *N.J.A.C.* 4A:4-7.7 provide that a reassignment shall not be used as part of disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good

faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

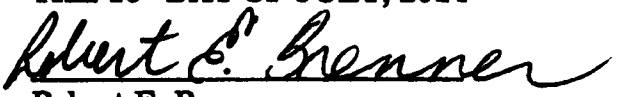
Initially, the appellant's arguments regarding his reassignment and disciplinary actions appear be an attempt to re-litigate his disciplinary matter. As noted earlier, the appellant may not appeal his disciplinary action since he is represented by the Communications Workers of America and he must pursue the disciplinary process as provided through his bargaining agreement. *See N.J.S.A.* 11A:2-14. Nevertheless, the appellant was served a PNDA on September 2, 2012, had a departmental hearing, and was issued an FNDA on February 23, 2013 upholding the charges and imposing a 10 working day suspension and reassignment to Central Office. Where an employee is served with a PNDA, has a departmental hearing, and receives notice of the reassignment as a penalty, such action satisfies the requirement that disciplinary procedures have been utilized in effectuating the transfer or reassignment. *See In the Matter of Michael Guarino* (MSB, decided March 23, 2005). Therefore, the appellant's reassignment was based on a disciplinary action in compliance with the rule.

ORDER

Therefore, it is ordered that these appeals 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 16th DAY OF JULY, 2014



Robert E. Brenner
Member
Civil Service Commission

Inquiries and Correspondence

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

Attachments

c: S.B.
L.K.-H.
Mamta Patel
Joseph Gambino

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

State of New Jersey
NEW JERSEY STATE PAROLE BOARD
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TELEPHONE NUMBER: (609) 292-4257

JAMES T. PLOUSIS
CHAIRMAN

SAMUEL J. PLUMERI, JR.
VICE-CHAIRMAN

September 27, 2011

S[redacted] B[redacted]
[redacted]

Re: Reasonable Accommodation Request

Dear Mr. B[redacted]:

The State Parole Board is responding to the letter you wrote to the Department of Treasury's Division of Equal Employment Opportunity and Affirmative Action (Division of EEO/AA) dated June 29, 2011.

Your letter notes your awareness that the State Parole Board has a Reasonable Accommodation Manual for Individuals with Disabilities (the Manual) and a Reasonable Accommodation Committee (the Committee) for addressing ADA requests. The Committee as presently constituted contains two individual who are attorneys-at-law and who are knowledgeable of ADA matters, as well as two members from management who are knowledgeable of the day-to-day operations of the agency. The Committee takes its job in reviewing and proposing recommendations on ADA requests very seriously, since the matters can directly affect agency operations. Those recommendations are then reviewed and decided by me, in my capacity as Executive Director, on behalf of the agency. The agency has this protocol to ensure that ADA requests are properly vetted and determined consistent with legal requirements and agency operations.

With respect to your request to be excused from compliance with the agency's Employee Dress Code, the Committee focused on the medical documentation provided by your doctor, Herman T. Barb, M.D. Dr. Barb wrote in a medical note on your behalf dated June 1, 2011:

> To Whom It May Concern:
>
> Mr. S[redacted] B[redacted] continues under my care. Present medication regimen makes hi[m] excessively sweat. Tight fitting neck wear may aggravate this problem. Please excuse his lack of proper attire with neck tie.

On June 21, 2011, and in response to Reasonable Accommodation Committee Chair L[redacted]-K[redacted] H[redacted]s' letter dated June 15, 2011, seeking clarification of your medical condition, Dr. Barb again stated: "Mr. B[redacted] present medication regimen makes him sweat excessively. Tight fitting neck wear, suit/sport jackets may aggravate this problem. Please allow Mr. B[redacted] to wear 'business casual' attire to the Parole Board's Central Office due to his medical condition."

In your letter to the Division of EEO/AA, you appear to be perplexed why the Reasonable Accommodation Committee's approved accommodation allows you to wear your neck tie loose ("no more than 2.5 inches") from your neck and without a sport coat or suit jacket. Please be advised that this is in direct response to the information provided by Dr. Barb on your behalf, which focuses on you not wearing 'tight fitting neck wear' and 'jackets.' The Manual makes clear that except in "obvious" matters, an ADA request requires medical justification, and if this information is not provided or is inadequate, a request may be denied. The Reasonable Accommodation Committee has directly and completely addressed the requirements of the medical documentation submitted to support your request.

Notwithstanding, the ADA accommodation process is intended to be dynamic and fluid. This means that if your medical needs have not been addressed by an approved accommodation, you would be within your rights under the Manual to have an existing accommodation modified on the basis of further medical documentation. We note in your letter to the Division of EEO/AA that you stated that you regularly have a fan blowing on you and that this addresses your needs "99% of the time." In an effort to expedite this matter, and assuming that Dr. Barb would provide you with further medical documentation, the Reasonable Accommodation Committee has recommended that you be provided with a fan when you are required to appear at Central Office. The fan would be provided to you in conjunction with the accommodation already in effect for your situation (i.e., loosened neck tie and no jacket). When you are required to appear at Central Office, kindly inform your supervisor, and your supervisor will be instructed to alert the Office of Human Resources, so the fan is available for your use.

Should you have any questions, please do not hesitate to contact Ms. Higgins at 609-984-6256.

Sincerely,

David Thomas
Executive Director

c: T[redacted] M[redacted]
B[redacted] H[redacted]
L[redacted]-K[redacted] H[redacted]
Diane Korchick

STATE OF NEW JERSEY

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

DEPARTMENT OF TREASURY
Division of Equal Employment Opportunity/Affirmative Action
P.O. Box 315
Trenton, NJ 08625-0315
Phone: (609) 777-0919 Fax: (609) 292-7067

ANDREW P. SIDAMON-ERISTOFF
State Treasurer

September 15, 2011

Mr. S[redacted] B[redacted]
[redacted]
[redacted]

RE: Division of EEO/AA Matter No. 2011348

Dear Mr. B[redacted]:

As you are aware, on or about July 1, 2011, you filed a complaint with the Division of Equal Employment Opportunity and Affirmative Action regarding the denial of your request for an accommodation due to your medical disability. As a result, we contacted the State Parole Board which has agreed to remand your request to the Board's Reasonable Accommodation Committee for consideration. Therefore, our office is sending your complaint back to the Board. This office will take no further action on the compliant filed July 1, 2011.

Should you disagree with the outcome of the Board's review, you may seek redress from the State Parole Board's EEO/AA office. I would like to remind you that the State Policy strictly prohibits retaliation against any employee who files a discrimination complaint or participates in an investigation. Also be reminded that all EEO matters are deemed confidential and should not be discussed.

Sincerely,

M[redacted] P[redacted], Director
Division of EEO/AA

c: L[redacted] K[redacted] H[redacted], EEO/AA Officer

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

State of New Jersey
NEW JERSEY STATE PAROLE BOARD
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TELEPHONE NUMBER: (609) 292-4257

JAMES T. PLOUSIS
CHAIRMAN

SAMUEL J. PLUMERI, JR.
VICE-CHAIRMAN

* * * * * **PERSONAL & CONFIDENTIAL** * * * * *

October 31, 2013

S[redacted] B[redacted]
[redacted]
[redacted]

Re: Reasonable Accommodation Request

Dear Mr. B[redacted]:

The State Parole Board is responding to your Reasonable Accommodation Request dated September 12, 2013.

Your request was premised on a letter from your doctor, Dr. Stephen Soloway, M.D., dated September 11, 2013, which stated that due to your condition, you should limit your commute to work to "320 miles in one week."

The agency contacted Dr. Soloway to get clarification regarding your driving condition, and the doctor stated in a letter, dated October 1, 2013: "He does need hourly activity ie walking &/or stretching due to stiffness, hence the need for his office to be closer to his home."

The agency contacted Dr. Soloway again and asked if your medical condition could be addressed by the agency providing you with a flexible start time; so you could stop your vehicle during your commute to work and adjust your body position and/or stretch, or so you could use New Jersey Transit's River Line, which has a station on the perimeter of our agency's parking lot here in Trenton. Dr. Soloway in a letter, which was faxed to the agency on October 10, 2013, said "Yes" to both options as meeting your medical needs.

On October 15, 2013, you wrote an email to D[redacted] M[redacted] in the Employee Relations Unit, and you stated that being provided with a flexible start time would not meet your needs because of commuter traffic and because of when you schedule some of your medical appointments.

On October 30, 2013, you met with J[redacted] H[redacted], Manager of Employee Relations, and you stated that if traffic is not an issue, you can commute from your home in Millville to the agency's Central Office in Trenton in approximately an hour and fifteen minutes. You stated that if you encounter traffic, your commute can be

lengthened.

Regarding your physical situation, you stated to Mr. H[redacted] that during the course of the day, while you do not need to get up and stretch every five minutes, you may need to do this every half hour to hour or so, which was consistent with what Dr. Soloway wrote about your condition. You stated that when you do get up from a seated position, you can take anywhere from thirty seconds up to five minutes to stretch and walk about, before you can resume a seated position.

The agency's Reasonable Accommodation Committee has considered your accommodation request in light of the information provided by Dr. Soloway on what your medical needs are, and what you stated you need to do to address you condition regarding being able to stand and/or stretch every half hour to hour or so. In light of this information, the agency will provide you with a flexible start time. Specifically, you may arrive at work at Central Office in Trenton during your regularly scheduled work days at any time on any of those days between the hours of 7:00 a.m. and 10:00 a.m., and then begin your normal work day. You should coordinate with your supervisor in OIS as to how to address documenting your arrival and/or departure time on those days when your supervisor is not at work at the time you arrive or depart. The agency believes that this will give you ample opportunity to commute to work and to take whatever rest stops you may need to take during your commute to address your medical condition.

An additional option would be to use your annual allotment of sick leave and/or administrative leave to be absent from work on those days when you were not able to commute to work and/or needed to attend a doctor's visit during your work day. Obviously, you may also use vacation time with pre-approval for these reasons as well.

Should you have any questions, please do not hesitate to contact Mr. Horan at 609-292-2849.

Sincerely,

David Thomas
Executive Director

c: R[redacted] O[redacted]
L[redacted] H[redacted]

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

State of New Jersey
NEW JERSEY STATE PAROLE BOARD
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JAMES T. PLOUSIS
CHAIRMAN

SAMUEL J. PLUMERI, JR.
VICE-CHAIRMAN

***** **PERSONAL & CONFIDENTIAL** *****

December 16, 2013

S[redacted] B[redacted]
[redacted]
[redacted]

Re: Reasonable Accommodation Request

Dear Mr. B[redacted]:

The State Parole Board is responding to your reasonable accommodation request dated November 18, 2013, to be permitted to work from home with respect to your Senior Parole Counselor job duties in the agency's Office of Interstate Services, Vital Statistics and Extraditions, Central Office, Trenton. See Attachment A.

Previously, you made a similar reasonable accommodation request dated September 12, 2013. As a result of input from your treating doctor at that time, the agency granted you an accommodation on October 31, 2013. See Attachment B. Specifically, you were allowed to have a flexible start time at work, so you could stop your motor vehicle and adjust your body position and/or get out and stretch at your leisure during your commute to and from Central Office in Trenton. Your doctor stated that this would meet the needs of your medical condition. See Attachment C.

With respect to your present accommodation request, it is not supported by any medical documentation whatsoever. While the agency's accommodation form requires you to provide the agency with a release to contact your doctor for proper medical information and support, when the agency sent your doctor a letter in this respect dated November 25, 2013, you contacted the Employee Relations (ER) Unit and specifically instructed the ER Unit not to have contact with your doctor. In essence, you revoked the medical information release that is required by the agency's Reasonable Accommodation Manual and which is incorporated into the agency's reasonable accommodation form. See Attachment D.

On December 5, 2013, you were cautioned by the ER Unit that if your doctor did not respond to the agency's November 25th letter and/or if you did not reinstate permission for the agency to communicate with your doctor regarding your current situation, your present reasonable accommodation request would be denied as being devoid of proper medical support. See Attachment E. To date, your doctor has not responded to that letter, and you have not given the agency permission to communicate

with your doctor. That being the case, you have put the agency into a position where it has no choice but to deny your request on this procedural basis. So your request is therefore denied on this basis.

Please be advised that should you decide to reinstate your reasonable accommodation request with authorization for the agency to contact your doctor or with a response to the agency's November 25th letter, the agency has determined that it will still deny your request on substantive grounds. (The below grounds are not ranked by importance.)

First, the ER Unit has spoken to you and your supervisor, Lt. Raquel Ortiz, with respect to the computer databases you would need to work from home. The preliminary information the agency has been provided by the IT Unit, which is still vetting the issue to a final conclusion with other State agencies, is that you would not have access to the required computer databases even if you were provided with an agency-issued laptop connecting to the State server by a VPN (virtual private network), which is how the SPB IT Unit gives access to any agency employee seeking internet access when they are working outside of a permanent location served by a personal computer directly accessed to the agency's network. See Attachment F.

Second, the reason you have been assigned to the agency's Central Office in Trenton is as a result of two incidents of insubordination in 2012 against your previous supervisor at Bayside State Prison, then-Unit Chief [redacted] G[redacted]. See Attachment G. Your work history reflects other instances of problematic behavior as well. For instance, you were disciplined in July 2012 as a result of making misleading computer entries with respect to your actual work performance. Ibid. Most recently, in the context of this reasonable accommodation process, you used inappropriate language to the ER Manager and you threatened him, which resulted in you being issued a Counseling Performance Notice on December 10, 2013. See Attachment H.

This type of repeated, problematic behavior on your part causes the agency to have legitimate concerns as to whether you are the type of employee who could be trusted to work from home under minimal supervisory oversight. In fact, to properly vette this issue, since the agency determined previously that you improperly surfed the internet at Bayside State Prison in 2012, the agency reviewed your internet usage and determined that you continue to engage in improper internet usage while at work in OIS, such as going onto what the agency's computer monitoring software describes as "Society and Lifestyles: Personals and Dating," as well as numerous other non-work-related websites. See Attachment I. The agency was told by the IT Unit that if you were permitted to work from home via an agency-issued laptop with a VPN, the IT Unit would be unable to monitor whether you were improperly surfing the internet on duty at your home or otherwise because of the laptop's ability to get access to the internet by a Wi-Fi connection.

Third, Lt. O[redacted] stated that you come to her on nearly a daily basis in OIS with respect to questions you have regarding your cases. She stated that in her opinion, if you were permitted to work from home, this would significantly affect your production in the unit. In addition, she believes that it would pose an undue hardship for her in attempting to properly supervise you from home, since she does not have an Assistant District Parole Supervisor/SGT in the unit, and there is no plan to place one in the unit in the near future.

Fourth, Lt. Ortiz stated that the files you are required to work on in OIS contain confidential/sensitive information regarding offenders, including Social Security Numbers, possible medical information, etc. Lt. Ortiz stated that these are not the type of files to be trusted at home by someone in your job title within the agency. Indeed, your disciplinary history contains a minor discipline in July 2011 for divulging confidential information improperly. In fact, the ER Unit was told by Lt. Ortiz in vetting out this issue that over the past month or two, she has noticed confidential employee personnel records left on your desk unsecured for anyone to see who happened to go by your desk, including disciplinary and CSC documentation pertaining to other agency employees at Central Office. Lt. Ortiz stated that that type of information should not be let out, unsecured, which is how you handled it. Lt. Ortiz stated that your handling of this type of sensitive/confidential information is problematic, and it certainly does not give the agency the confidence to trust you at home with such records without proper supervisory oversight.

For all of the above reasons, even if your reasonable accommodation request were to be properly medically justified, the agency has decided that your request cannot be granted on substantive grounds.

Should you have any questions, please do not hesitate to contact Mr. Horan at 609-292-2849.

Sincerely,

David Thomas
Executive Director

c: Joseph P. Horan, RAC Coordinator

State of New Jersey
NEW JERSEY STATE PAROLE BOARD
P.O. BOX 862
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TELEPHONE NUMBER: (609) 292-4257

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

JAMES T. PLOUSIS
CHAIRMAN

SAMUEL J. PLUMERI, JR.
VICE-CHAIRMAN

July 27, 2012

S[redacted] B[redacted]
[redacted]
[redacted]

Re: Discrimination Complaint 2012-01

Dear Mr. B[redacted]:

Initially you filed a formal complaint on March 22, 2012 alleging discrimination based on Gender Identity or Expression and Sexual Harassment based on events occurring between yourself and your supervisor Y[redacted] G[redacted]. Following a meeting with the EEO Officer you amended your EEO complaint to allege a violation of the NJ State *Policy Prohibiting Discrimination in the Workplace* on the basis of Sex/Gender. The EEO Unit conducted an internal investigation to determine whether there was a violation of the State *Policy Prohibiting Discrimination in the Workplace*. Specifically, you alleged the following: (#1) swearing and inappropriate language by Hearing Officer III Y[redacted] G[redacted]; (#2) comments HO G[redacted] made upon returning from a meeting with the Bayside State Prison Administration; (#3) HO G[redacted]'s conduct on February 16, 2012 towards you in response to you exiting the Panel hearing to retrieve a document from the State Parole Board office; (#4) proposed changes in office procedure resulted in a conversation with SPB staff wherein HO G[redacted]'s response shows evidence of a violation of the *Policy* based on sex/gender; and (#5) HO G[redacted] no longer brings breakfast food to the BSP SPB staff meetings.

Please be advised that this office is in receipt of the final confidential investigative report, which was reviewed in rendering a determination for disposition of the complaint. After a careful review of the report it is clear that the facts and supporting documents presented do not support a claim of discrimination based on sex/gender.

Regarding allegation #1: Witness testimony provided that both the staff members and the supervisor utter swear words during the performance of their job. In order to be a violation of the Policy, the conduct must have an adverse impact on a specific group or protected category. The testimony you provided as well as testimony provided by the witnesses and the accused agree that the swear words are limited to "shit", "damn", or "hell" with an occasional "fuck" being uttered by the supervisor and staff members. While the swearing (shit, damn, hell) does not violate the Policy due to an inability to be associated with a protected category of the Policy, or because the utterances (fuck) were not severe and pervasive enough to establish that the conditions of employment were altered and the working environment has become hostile or abusive; the use of swear words in the workplace is a violation of the Code of Professional Conduct. SPB staff members are expected to uphold professional decorum in the office, ensure compliance with all policies and procedures. There is evidence that all of the SPB staff at BSP utilize swear words during the execution of their duties, therefore you are reminded of your responsibility to uphold the provisions of the Code of Professional Conduct. Additionally, SPB staff at BSP to include HO G[redacted] will also be counseled on this matter to ensure compliance with the Code of Professional Conduct. Based on the information above, there is insufficient evidence to find a violation of the State's *Policy* based on sex/gender for swearing in the workplace.

Regarding allegation #2: When asked by SPB staff how the meeting went with BSP Administration, it is alleged that HO G[redacted] reported that it was "a bunch of men with their dicks hanging out," or a similar statement. Credibility issues made it difficult to corroborate the allegation. One of the witnesses indicated that such a statement was not uttered. Based on the witness statements, there is no indication that such a statement, if uttered, was uttered more than once, or that statements of a similar nature were uttered previously or since. Therefore, the severe and persistent nature of the Policy has not been implicated. However, administrative measures will be taken to ensure that HO G[redacted] maintains a professional demeanor at all times. Based on this information, there is insufficient evidence to find a violation of the State's *Policy* based on sex/gender.

Regarding allegation #3: According to statements provided during this investigation, it was determined that upon entering the BSP SPB office on February 16, 2012, you refused to look at, or respond to HO G[redacted]'s inquires and turned your back on her while she was directing you to return to the Panel hearing room. During this conversation there was no indication by any witness or by either HO G[redacted] or you that there was any statement or inference regarding sex or gender during or after these exchanges between you and HO G[redacted]. Nor has there been any evidence submitted of HO G[redacted] conducting herself in a sexual, abusive, or offensive manner based on your gender and there is no evidence of any employment decisions having been rendered. Accordingly, there is insufficient evidence to support a finding of a violation of the *Policy* based on sex/gender as a result of your interaction with HO G[redacted] on February 16, 2012.

Regarding allegation #4: During a staff meeting several parole counselors expressed objections to a proposed new procedure for Panel hearings at BSP-Farm; such as time in passage through Sally Ports at BSP-Main and BSP-Farm would delay the Panel hearings; increased mileage for employee's vehicles used for travel to the Main facility, then to the Farm was prohibitive; the cost of gas for personal vehicles was prohibitive and metal contained in some articles of clothing would further delay passage through the two Sally Ports causing a delay in the start of Panel hearings. There was also a discussion raised by staff regarding specific articles of women's clothing that may contain metal along with other obstacles which would trigger the metal detector causing further delay in entering the facility. Due to the variety of objections expressed by the parole counselors, the new procedure was never implemented. There was no employment decisions rendered based on sex/gender and there is no evidence that HO G[redacted] conducted herself in a sexual, abusive, or offensive manner, refused to discuss men's clothing or made any disparaging remarks against you because of your gender. Accordingly, there is insufficient evidence to support a find of a violation of the *Policy* based on sex/gender.

Regarding allegation #5: The food was being provided to the BSP SPB staff as a team building effort. Because staff cannot bring food into the facility for security reasons, HO G[redacted] brought food to an office outside of the secured area of the prison and elected to hold the staff meetings in this location. The decision to stop bringing food to all staff members is unilateral. Neither male staff members, nor female staff members were treated differently due to food no longer being brought into the meeting room and no employment decisions were rendered based on whether food was being provided or not. Accordingly, there is insufficient evidence to support a finding of a violation of the *Policy* based on sex/gender due to HO G[redacted]'s decision to stop bringing breakfast food to staff meetings.

This office concurs with the findings made in the EEO investigative report and therefore has adopted their recommendation that there was not a violation of the provisions of the *New Jersey State Policy Prohibiting Discrimination in the Workplace*. Please bear in mind that the State's *Policy* against discrimination in the workplace requires that EEO matters remain confidential and the results of the investigation should not be discussed with others. The State's *Policy* prohibits retaliation against any employee for filing a complaint or participating in an investigation in any capacity. Thus, it shall be a violation of the State's *Policy* for any supervisor or employee to make reprisals against any person because he/she has filed a complaint, testified or assisted in any proceeding under this *Policy*. Threats, other forms of intimidation, and/or retaliation against the complainant or any other party based on involvement in the complaint process shall be cause for appropriate disciplinary action, which may include termination.

You have the right to appeal this determination to the New Jersey Civil Service Commission, Division of Merit System Practices and Labor Relations, Written Record Appeals Unit, P.O. Box 312, Trenton, NJ 08625-0312, postmarked or delivered within 20 days of your receipt of this determination. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Be advised that effective July 1, 2010, there is a $20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee. However, if it is determined that disciplinary action will be taken, the procedures for the appeal of disciplinary action must be followed.

Sincerely,

David Thomas
Executive Director

DT/ds
c: Lise-Kirsten Higgins, EEO Officer
Mamta Patel, Director, Division of EEO-AA
File

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

State of New Jersey
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JAMES T. PLOUSIS
CHAIRMAN

SAMUEL J. PLUMERI, JR.
VICE-CHAIRMAN

August 29, 2012

S[redacted] B[redacted]
[redacted]

VIA REGULAR AND CERTIFIED MAIL

Dear Mr. B[redacted]:

RE: New Jersey State Policy Prohibiting Discrimination in the Workplace

Dear Mr. B[redacted]:

On August 20, 2012 you submitted an allegation of a violation of the NJ Policy Prohibiting Discrimination in the Workplace (Policy) based on retaliation. Specifically, you contend that Regional Supervisor B[redacted] H[redacted] retaliated against you for having filed an appeal to the Civil Service Commission regarding the State Parole Board's final determination of your EEC complaint against Hearing Officer Y[redacted] G[redacted]. You claim that Mr. H[redacted]s retaliation is evidenced by his having changed the work hours at the State Parole Board (SPB) offices located at Bayside State Prison (BSP). Your email indicates that Mr. H[redacted] reviewed the time sheets at Bayside Prison and determined that the Bayside State Prison Parole Board staff was not complying with the SPB Time and Attendance Policy.

A complaint of retaliation requires that the complained of conduct have a nexus to the EEC complaint. You maintain that Mr. H[redacted]'s requirement that all BSP staff comply with the SPB Time and Attendance Policy is tied to your having appealed the SPB final determination of your complaint against Ms G[redacted].

Please be advised that the description of events submitted in the August 20, 2012 email shows a manager acting within his managerial responsibilities to ensure that SPB field offices comply with the SPB Time and Attendance Policy. Evidence shows that prior to sending out an email to the SPB staff at BSP, Mr. H[redacted] conferred with the Employee Relations Manager. Mr H[redacted]'s email directive was issued to all SPB staff assigned to BSP and requires that employees comply with selecting a daily work period that fit into the core hours outlined in the Time and Attendance Policy.

Furthermore, the record shows that the SPB EEO Unit did not receive notice of your appeal to the Civil Service Commission, Merit System and Practices Board until August 24, 2012 and Mr H[redacted] has not been provided with notice of the existence of this appeal. Thus, there is no evidence to support your contention that Mr. H[redacted] acted in retaliation for your having filed an

appeal of the SPB final determination of your EEO complaint against Y[redacted] G[redacted].

In summary, there is insufficient evidence to support your contention of retaliation. The NJ State Parole Board EEO/AA Unit will not take any further action on this matter. You may appeal the determination in this matter to the Civil Service Commission. Merit System Board, Unit B, P.O. Box 312, Trenton, NJ 08625-0312 within 20 days of receipt of this correspondence. Your appeal to the Merit System Board must be in writing and must specify the reason for the appeal and the remedy that you seek.

You may also contact the NJ Division on Civil Rights and./or the Equal Employment Opportunity Commission. The appropriate contact information is attached for your convenience. Should you have any additional questions regarding this matter please contact me directly at 609-984-6256.

Sincerely,

Lise-Kirsten S. Higgins
EEO/AA Officer

CERTIFIED MAIL # 7011 0110 0000 4658 7313

Attachment

C Mamta Patel, Esq., Director, CSC-Div. EEO/AA
2012-05

Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

DIVISION OF EEO/AA
P.O. BOX 315
Trenton, NJ 08625-0315
PHONE: (609) 984-1096 FAX: (609) 292-7067

Robert M. Czech
Chair/Chief Executive Officer

CONFIDENTIAL
May 17, 2013

Via Regular and Certified Mail
S[redacted] E[redacted]
[redacted]

Re: Division of EEO/AA File No: 2013-184

Dear Mr. B[redacted]:

The Division of Equal Employment Opportunity and Affirmative Action ("Division of EEO/AA") has reviewed your complaint dated March 7, 2013, alleging a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy") by Mr. W[redacted] S[redacted], District Parole Supervisor.

You complain that Mr. S[redacted] failed to report alleged inappropriate comments regarding your alleged "disability" by Mr. B[redacted] H[redacted] and Ms. Y[redacted] G[redacted], witnesses that testified during your disciplinary hearing pursuant to the State Policy. The Division of EEO/AA has been advised by the State Parole Board that the comments by Mr. H[redacted] and Ms. G[redacted] were appropriately reported by Mr. S[redacted] and as a result the State Parole Board has taken appropriate corrective action. Therefore, the Division of EEO/AA will take no further action regarding this issue.

You also allege that Mr. S[redacted]'s Department Level Disciplinary Decision dated February 25, 2013, inappropriately includes language and information, based on the witnesses' testimony, regarding your alleged "disability." If you believe that Mr. S[redacted] included and relied on inappropriate witness testimony or information regarding your alleged "disability", if you have not already done so, you can file an appeal with the Public Employees Relations Commission ("PERC") and seek relief during your arbitration, including having the part(s) that refer to the comments about your alleged "disability" by Mr. H[redacted] and Ms. G[redacted] removed or redacted from the decision. Therefore, the Division of EEO/AA will take no further action regarding this issue.

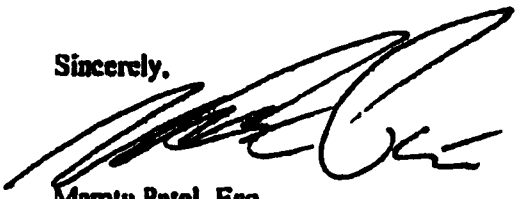
Based on the above the Division of EEO/AA will close its file regarding this issue.

Please be assured that the substance of your complaint will remain confidential. Likewise, pursuant to the State Policy's confidentiality provision you should not discuss this matter with anyone who would not have a legitimate business reason to know.

The State Policy also prohibits retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides information in the course of an investigation into claims of discrimination or harassment in the workplace or opposes a discriminatory practice. Please contact the State Parole Board, immediately, if you believe that you have been subjected to retaliation or you have future complaints of discrimination.

Please feel free to contact this office at (609) 633-9840 if you have any questions.

Sincerely,



Mamta Patel. Esq.,
Director, Division of EEO/AA

C: L[redacted]-H[redacted]
EEO Officer, State Parole Board

Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

DIVISION OF EEO/AA
P.O. BOX 315
Trenton, NJ 08625-0315
PHONE: (609) 777-0919 FAX: (609) 292-7067

Robert M. Czech
Chair/Chief Executive Officer

******* PERSONAL & CONFIDENTIAL *******

December 14, 2012

Sent Via Regular and Certified Mail

S[redacted] B[redacted]
[redacted]

Re: Your Discrimination Complaint
Division of EEO/AA Docket No. 2012-659

Dear Mr. B[redacted]:

The Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) the unit within State Government which is tasked with overseeing the administration and enforcement of the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy") is in receipt of your complaint alleging gender discrimination and retaliation, dated September 28, 2012. " In your complaint you allege violations of the State Policy. Pursuant to *N.J.A.C. 4A 3-7(e)*, Model Procedures for Internal Complaints, if reporting a complaint presents a conflict of interest, the complaint may be filed directly with the Division of EEO/AA. An example of such conflict would be where the individual against whom the complaint is made is involved in the intake, investigation or decision making process. In your complaint you have named, amongst others, J[redacted] H[redacted], Manager of Employee Relations, who is also familiar with your prior EEO complaints. The Division of EEO/AA has been made aware that you raised some concerns with the Parole Board investigating your complaint. Therefore, the Division of EEO/AA will conduct the investigation.

The State Policy prohibits all forms of employment discrimination or harassment based upon 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. These categories are commonly referred to as "protected classes." The State Policy also prohibits retaliation against individuals for bringing a complaint, providing information for an investigation, or testify in any proceeding under the State Policy.

Your complaint dated September 28, 2012, alleges retaliation and discrimination on the basis of disability and sex/gender in violation of the Policy against the following Parole Board employees: Y[redacted] G[redacted], Unit Supervisor; B[redacted] H[redacted], Regional Supervisor; L[redacted] G[redacted], Deputy Executive Director; and J[redacted] H[redacted], Manager of Employee Relations.

Specifically, you allege the following against these four individuals: (1) in August 2012, Mr. H[redacted] and Ms. G[redacted] gave you the 'silent treatment' by ignoring you when you came to work, but would greet everyone else in your unit; (2) in August 2012, Mr. H[redacted] offered you a settlement agreement for a thirty-day suspension of discipline you were about to serve in exchange for you waiving 'all claims, suits, or actions' against the Parole Board; (3) D[redacted] M[redacted] from the Parole Board Human Resources Unit told Ms. G[redacted] about a reasonable accommodation request you had made, and this caused Ms. G[redacted] to "knit-pick and to give [you] a hard time," including where you placed a "small waste basket" in the office; (4) on August 23, 2012, you received a letter from Mr. G[redacted] that you were being "re-assigned due to operational effectiveness" as a result of your placement of said waste basket; (5) on the same day, August 23, 2012, Mr. G[redacted] had a meeting with you and "basically attempted to intimidate [you] to get with the program and not make waves by filing EEOC complaints"; (6) on September 3, 2012, you received a preliminary notice of discipline for a three-day suspension for falsification of records, while other employees who had engaged in the same actions were not disciplined; (7) on September 6, 2012, Mr. H[redacted] had a meeting with you and informed you that your computer use and email use was audited, and you believe this is due to you leaving documents which you had "printed off of the internet regarding filing a EEOC complaint"; (8) on September 7, 2012, you called Bayside State Prison about "some shredding that [you] had to leave behind," and you were told by co-workers that Ms. "G[redacted] spent what they described as hours slowly going through [your] shredding bin" in "violation of [your] right to privacy"; (9) on September 17, 2012, you were issued a preliminary notice of discipline for a ten-day suspension and two-year reassignment from Bayside State Prison to Trenton in violation of the Parole Board's own internal policies and "to retaliate against you for filing EEO and EEOC complaints"; (10) Ms. G[redacted] caused you to have "4 disciplinary charges," two negative performance evaluations, and several letters of counsel and significant events for negative performance; (11) Ms. G[redacted] "purposely attempted to remove males from her supervision, including yourself; (12) Mr. H[redacted] and Ms. G[redacted] have described you "as being 'red faced'," which relates

to a medical condition you have and for which you have filed a reasonable accommodation request with the Parole Board in 2011; (13) Ms. G[redacted] "would whisper about [you] loud enough so that [you] could hear" her speaking about you to your new supervisor, K[redacted] H[redacted], and to your Regional Supervisor, Mr. H[redacted], which you believe is "just a continuing hostile working environment that Ms. G[redacted] has created" for you.

The Division of EEO/AA has determined that it will not investigate the following allegations. Allegation #2 will not be investigated because your allegation, as presented, does not implicate the State Policy. The allegation does not pertain to an EEO protected category, and it is a common practice to resolve all claims when the basis for a disputed matter is settled.

Allegations #3, #4, #9 and #11 will not be investigated because the Division of EEO/AA is copied on all EEO-related filings with the Civil Service Commission's Division of Appeals and Regulatory Affairs (formerly known as the "Division of Merit System Practices and Labor Relations"). The Division of EEO/AA is aware that you have raised the basis for these issues on appeal to that Division, seeking relief regarding the Parole Board's reassignment of you from Bayside State Prison because of the placement of said "waste basket." The Division of EEO/AA is also aware that the Parole Board has responded to your allegations on appeal in that Division. Since you have placed the basis for these allegations before another Division for review within the Commission, it would not be proper for the Division of EEO/AA to also review the allegations, particularly as that matter is still pending review.

Allegations #6 and #10 will not be investigated because your allegations, as presented, do not implicate the State Policy. The allegations do not pertain to an EEO protected category. Under the Policy, employees who have engaged in the EEO process are not prohibited from being disciplined if the discipline is done for "legitimate business reasons." You have not provided adequate information to implicate the Policy with respect to retaliation.

Allegation #8 will not be investigated because your allegation, as presented, does not implicate the State Policy. Privacy is not a protected class.

The Division of EEO/AA will not open a formal EEO investigation into the above allegations for the reasons stated. If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, Written Record Appeals Unit, P. O. Box 312, Trenton, NJ 08625-0312, postmarked or delivered within 20 days of your receipt of this determination. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Be advised that there is a $20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC.

Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

The Division of EEO/AA will investigate the remainder of your allegations as they reasonably appear to implicate the State Policy. Please be assured that the substance of your complaint will remain confidential. Likewise, you should not discuss this matter with anyone, which is a requirement of the State Policy's confidentiality provision.

The State Policy prohibits retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides information in the course of an investigation into claims of discrimination or harassment in the workplace or opposes a discriminatory practice. Please immediately contact the Division of EEO/AA at (609) 984-1096, if you feel that you have been the victim of retaliation or if you have any future complaints of discrimination or harassment.

Sincerely,

Mamta Patel, Director
Div. of Equal Employment Opportunity
& Affirmative Action

c: Shannon L. Dalton, Div. of Appeals & Regulatory Affairs
Monica Rodriguez, Investigator

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

State of New Jersey
NEW JERSEY STATE PAROLE BOARD
P.O. BOX 862
TRENTON, NEW JERSEY 08625
TELEPHONE NUMBER: (609) 292-4257

JAMES T. PLOUSIS
CHAIRMAN

SAMUEL J. PLUMERI, JR.
VICE-CHAIRMAN

June 26, 2013

Sent Via Regular and Certified Mail
S[redacted] B[redacted]
[redacted]

Re: Discrimination Complaint
Division of EEO/AA File No. 2012-478 & 2012-659

Dear Mr. B[redacted]:

The Division of the Equal Employment Opportunity/Affirmative Action ("Division of EEO/AA") investigated your complaint(s) dated July 18, 2012 and September 28, 2012, alleging discrimination based on your sex/gender, disability and retaliation against Ms. Y[redacted] G[redacted], Hearing Officer 3, Bayside State Prison("BSP"), Mr. B[redacted] H[redacted], Hearing Officer 4, Mr. J[redacted] H[redacted], Manager, Employee Relations, and Mr. L[redacted] G[redacted], Deputy Executive Director, employees of the State Parole Board ("SPB"). As a result of a conflict your complaint(s) were referred to the Division of EEO/AA for investigation. The Division of EEO/AA conducted a thorough investigation pursuant to the *New Jersey State Policy Prohibiting Discrimination in the Workplace* ("State Policy"), during which individuals were interviewed and relevant documentation was reviewed and analyzed. In addition, the tape recording of the meeting you had with Mr. G[redacted] on August 24, 2012, was reviewed.

I have reviewed the Division of EEO/AA's investigative report and adopt the findings and recommendations discussed below.

In your complaint, you allege the following: (1) In August 2012, Mr. H[redacted] and Ms. G[redacted] ignored you while greeting everyone else in the office (2) In August 2012, Ms. G[redacted] would whisper to Mr. H[redacted] and Ms. H[redacted] about you on a daily basis and it made you and your co-workers uncomfortable, (3) On August 23, 2012, during a meeting with Mr. G[redacted], he told you that you would have problems being promoted due to your filing of a prior EEOC/EEO Complaint against Ms. G[redacted] and you further claim that Mr. G[redacted] discriminated against you by referring to Ms. G[redacted]'s gender, during the conversation, (4) Mr. H[redacted] retaliated against you by auditing your internet access for filing an EEOC/EEO Complaint against Ms. G[redacted], and (5) Mr. H[redacted] and Ms. G[redacted] discriminated against you based on your disability by referring to you as "red-faced."

Greetings

You allege that in August 2012, Mr. H[redacted] and Ms. G[redacted] ignored you while greeting everyone else in the office. None of the witnesses interviewed corroborated your allegation that Ms. G[redacted] or Mr. H[redacted] gave you the "silent treatment" by failing to greet you in the morning while greeting everyone else. The witnesses that recollected the morning greetings or that were in a position to hear the greetings confirmed that the morning greetings by Ms. G[redacted] and Mr. H[redacted] were a general "good morning" or "hello" to everyone. Ms. G[redacted] admitted to giving a general acknowledgment in the mornings upon arriving to the office. Mr. H[redacted] recalled saying good morning to staff upon arriving to the office. Ms. G[redacted] and Mr. H[redacted] denied retaliating against you and giving you the "cold shoulder." The investigation did not substantiate that Ms. G[redacted] or Mr. H[redacted] retaliated against you in violation of the State Policy.

Whispering

You further allege that in August 2012, Ms. G[redacted] would whisper to Mr. H[redacted] and Ms. H[redacted] about you on a daily basis and it made you and your co-workers uncomfortable. During your interview you only reported hearing the words "him" and "Stan" as well as "psst, psst." All of the witnesses interviewed admitted to seeing and hearing whispering by Ms. G[redacted] and Mr. H[redacted]. However, none of the witnesses could confirm that the whispering was about you or any other staff member. In your statement, you also admitted to hearing "psst psst." Ms. G[redacted] stated that she does not have a private office and sits among the staff in a general office area. She admitted to using a quiet tone or whisper if necessary with Ms. H[redacted] when offering her guidance or direction. She further admitted to whispering about any employee under her supervision and not just you. Mr. H[redacted] explained that he and Ms. G[redacted] have discussed employee relation issues in private and if necessary would speak in a tone so that others could not overhear. The investigation found no evidence that the whispering was about you. The investigation did not substantiate that Ms. G[redacted] or Mr. H[redacted] whispered inappropriately against you in violation of the State Policy.

Retaliation by Mr. G[redacted]

You allege that on August 23, 2012, during a meeting with Mr. G[redacted] you claim he is retaliating against you by insinuating that your EEOC/EEO Complaints would hinder your opportunity for future promotions. Mr. G[redacted] admitted that he told you that your emails to Mr. H[redacted] and Ms. L[redacted]-K[redacted] H[redacted] were a distraction and was not productive. The investigation failed to reveal that Mr. G[redacted] had any knowledge that you had filed an EEO/EEOC complaint against him or against any other employee. The investigation failed to substantiate that Mr. G[redacted]'s comments regarding emails you sent to Ms. H[redacted] and Mr. H[redacted] were retaliatory in violation of the State Policy.

Reference to Ms. G[redacted]'s Gender

You also allege that on August 23, 2012, during the meeting with Mr. G[redacted], he discriminated against you by referring to Ms. G[redacted]'s gender, during the conversation. Mr. G[redacted] explained that his reference to Ms. G[redacted]'s gender was to illustrate and convey to you how your actions toward Ms. G[redacted] made her feel threatened and afraid during the incident on August 22, 2012. He denied using the term in a derogatory or demeaning manner. Based on the foregoing, the Division of EEO/AA finds that any reference to Ms. G[redacted]'s gender by Mr. G[redacted] was not particularly derogatory or demeaning in a manner that would constitute a violation of the State Policy.

Internet Audit

You allege that Mr. H[redacted] authorized the audit of your internet access in retaliation for filing a prior EEOC/EEO complaint against Ms. G[redacted]. The investigation revealed that after your reassignment to the Office of Interstate Services, documents you left behind revealed printouts from various internet sites that were not work related. Mr. H[redacted] reported that he was presented with an extensive amount of documentation regarding your use of the internet which was determined not to be related to your work. The investigation determined the New Jersey State Parole Board, Information Technology Procedure Number: SPB-IT-03-3 states:

> The Internet is comprised of many different, interconnecting networks and computer systems and is a vast repository of information that can greatly assist in conducting the work of the New Jersey State Parole Board (NJSPB). However, while potentially of significant benefit, Internet access also has the potential for misuse or inappropriate use by the user.

Mr. H[redacted] concluded your actions were at odds with the policy, and the policy contains a number of cautions for employees that you disregarded, including that there is no expectation of privacy for use of the agency's internet by an employee, and that the agency monitors internet usage by employees. Therefore, based on the information presented to Mr. H[redacted], he recommended a six month review of your past/prior internet usage.

The investigation further revealed that as of this date the SPB has not issued any disciplinary charges against you based on your use of the internet. Mr. H[redacted] denied retaliating against you by auditing your usage and contends it is permissible under the agency's policy.

The investigation failed to reveal any evidence that Mr. H[redacted] audited your internet access in violation of the State Policy.

Disability

You allege that Mr. H[redacted] and Ms. G[redacted] have discriminated against you based on your disability by referring to you as "red-faced." More specifically you state that your medication makes you "overheat" and at times you experience "flushing and redness of the face." The investigation revealed that Ms. G[redacted] was unaware of any disability, medication or reasonable accommodation request that would cause you to experience a physical reaction by being red in the face. She recalled an accommodation granted to you prior to her arrival in the unit, that allows you a relaxation of the dress code. Ms. G[redacted] contends that the only time she used the "red-faced" reference was to describe your facial expression during the two acts of insubordination on February 16, 2012 and again on August 22, 2012. Ms. G[redacted] denied being aware that you had a documented medical condition and did not use the term in a discriminatory fashion.

Mr. H[redacted] is also the ADA Coordinator for the SPB. He admitted to being aware of your request for a relaxation of the dress code and granting same. He stated that he was aware, based on your medical information, that your prescriptions made you perspire easily and not that you would become "red in the face." Furthermore, Mr. H[redacted] stated that he issued disciplinary paperwork noting that detail as reported by Ms. G[redacted]. He contends that he has never referred to you as being "red-faced" other than in the context of disciplinary ramifications of your behavior toward Ms. G[redacted]. The investigation failed to reveal any evidence that Ms. G[redacted] or Mr. H[redacted] used the term "red-faced" in violation of the State Policy.

Based upon the above, the Division of EEO/AA's investigation did not substantiate a violation of the State Policy prohibiting discrimination and retaliation in the workplace.

If you disagree with this determination, you have the right to file an appeal with the New Jersey Civil Service Commission within 20 days of your receipt of this letter. **The burden of proof is on the Appellant.** The appeal must be in writing, state the reason(s) for the appeal and specify the relief requested. All materials presented at the department level and a copy of this determination letter must be included. The appeal should be submitted to the NJ Civil Service Commission, Director of The Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, NJ 08625-0312. Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a $20 fee for appeals. Please include the required $20 fee with your appeal. Payment must be made by check or money order, payable to the "NJ CSC." Persons receiving public assistance pursuant to 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.

Please be advised that the State Policy prohibits retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides information in the course of an investigation into claims of discrimination or harassment, or opposes a discriminatory practice.

In addition, all aspects of the EEO complaints, investigations and determinations are considered highly sensitive and must be kept confidential. You should not discuss this matter, including its outcome, with anyone else. Persons who violate the confidentiality provision in the State Policy may be subject to discipline. If you have any questions, please contact the Division of EEO/AA at (609) 633-9840.

Sincerely,

David W. Thomas
Executive Director

C: M[redacted] P[redacted], Esq., Director, Division of EEO/AA
L[redacted]-K[redacted] H[redacted], EEO Officer
File

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

State of New Jersey
NEW JERSEY STATE PAROLE BOARD
P.O. BOX 862
TRENTON, NEW JERSEY 08625
TELEPHONE NUMBER: (609) 292-4257

JAMES T. PLOUSIS
CHAIRMAN

SAMUEL J. PLUMERI, JR.
VICE-CHAIRMAN

June 28, 2013

VIA CERTIFIED AND REGULAR MAIL

S[redacted] B[redacted]
[redacted]
[redacted]

RE: New Jersey State Policy Prohibiting Discrimination in the Workplace

Dear Mr. B[redacted]:

This will acknowledge receipt of your discrimination complaint dated June 10, 2013 filed alleging retaliation.

Specifically, you indicate that Y[redacted] G[redacted]'s judgment towards offenders is impaired due to her fear of individuals with a mental disorder. Additionally, she has made reference to you having a red face, thus implicating the State Policy based on disability. You continue that W[redacted] S[redacted] relied on biased testimony from B[redacted] H[redacted] and Y[redacted] G[redacted] in his determination of the outcome of your disciplinary hearing. You also contend that Mr. S[redacted] used testimony of J[redacted] H[redacted] regarding your reasonable accommodation request in making his determination regarding the outcome of your disciplinary hearing.

The complaint was received in this office on June 10, 2013. Please be advised a review of the relevant documentation failed to substantiate your allegation. Interviews of relevant individuals failed to substantiate your contention that testimony referred to prior EEO matters and show evidence of retaliation. Interviews also failed to substantiate that the hearing decision was based on biased testimony or reasonable accommodation information.

The remainder of your allegations refers to matters that were investigated by the Civil Service Commission-Division of EEO. Although you indicated in your complaint that these issues were not previously raised, the May 17, 2013 correspondence from M[redacted] P[redacted], Director of the Division of EEO shows that the issues were investigated and appropriate corrective action had already been taken. A copy of Director P[redacted]'s May 17, 2013 correspondence is attached for your convenience. Accordingly, there will be no further action taken as the State Parole Board considers the matter closed.

The provisions of the *New Jersey State Policy Prohibiting Discrimination in the Workplace* (State Policy) require all related complaints and investigations to be handled on a confidential basis to the extent possible. **Consequently, you should not discuss this matter with anyone, nor should you hear anyone discussing this situation. Should this occur, or if you hear anyone discussing the investigation, you must advise my office immediately.** Failure to comply will result in a breach of confidentiality, which would require an

investigation. In addition, the Policy prohibits retaliation against anyone that has filed a complaint or participated in a complaint investigation. You should advise me of any unfavorable employment actions against you.

In summary, the NJ State Parole Board EEO/AA Unit will not take any further action on this matter. If you disagree with this determination, you have the right to file an appeal with the New Jersey Civil Service Commission within 20 days of your receipt of this letter. The burden of proof is on the Appellant. The appeal must be in writing, state the reason(s) for the appeal and specify the relief requested. All materials presented at the department level and a copy of this determination letter must be included. The appeal should be submitted to the NJ Civil Service Commission, Director of The Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, NJ 08625-0312. Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a $20 fee for appeals. Please include the required $20 fee with your appeal. Payment must be made by check or money order, payable to the "NJ CSC." Persons receiving public assistance pursuant to 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.

Sincerely,

Lise-Kirsten S. Higgins
EEO/AA Officer

Enclosure

CERTIFIED MAIL # 7002 0860 0008 4951 8989

C M[redacted] P[redacted], Dir., CSC Div. of EEO
2013-14

Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

DIVISION OF EEO/AA
P.O. BOX 315
Trenton, NJ 08625-0315
PHONE: (609) 984-1096 FAX: (609) 292-7067

Robert M. Czech
Chair/Chief Executive Officer

CONFIDENTIAL
May 6, 2013

Via Regular and Certified Mail
S[redacted] B[redacted]
[redacted]
[redacted]

Re: Email dated March 13, 2013

Dear Mr. B[redacted]:

The Division of Equal Employment Opportunity and Affirmative Action ("Division of EEO/AA") is in receipt of your email dated March 13, 2013, alleging an "anonymous employee ....has stated disturbing things regarding Ms. Y[redacted] G[redacted]'s and Mr. B[redacted] H[redacted]'s recent behavior.....and have been meeting recently and having discussions about my EEO complaint and current investigation." Please be advised that in order for our office to investigate the claims we will need you to provide the identity of the anonymous individual to obtain the information and a statement from him/her. Please be aware that the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy") states, that all related complaints and investigations will be handled on a confidential basis, to the extent possible. In addition, there is a prohibition of retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides information in the course of an investigation into claims of discrimination or harassment, or opposes a discriminatory practice. If the individual feels that they have been retaliated against after providing information regarding an EEO matter, they can contact L[redacted] H[redacted], EEO Officer, State Parole Board.

Please provide the name of the individual who reported the allegation regarding Ms. G[redacted] and Mr. H[redacted]'s discussion about your EEO complaint within 10 days from the receipt of this letter. If the information is not provided with the 10 day period, no further action will be taken. Also, be reminded that the State Policy encourages any employee who witnesses a violation of the policy to cooperate with investigations.

Sincerely,

Mamta Patel. Esq.,
Director, Division of EEO/AA

C: LiseKirsten-Higgins, EEO Officer, State Parole Board