



STATE OF NEW JERSEY

In the Matter of S.D.,  
Kean University

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-2820

Discrimination Appeal

ISSUED: OCT 06 2017 (JET)

S.D., a retired Professor with Kean University, appeals the decision of the University President, which found that the appellant failed to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the appellant, an African American female, filed a discrimination complaint with the Office of Affirmative Action Programs (OAAP) alleging that she was denied classroom teaching assignments. The appellant stated that her fitness for duty evaluations did not preclude her from performing teaching assignments, and the appointing authority's decision to reassign her teaching duties and subject her to fitness for duty evaluations was in violation of the Americans with Disabilities Act (ADA) and the State Policy. Specifically, in two e-mails dated November 25, 2015 to the Director of Affirmative Action Programs, the appellant alleged that her perceived disability was improperly used to shut down her career and no hearing was authorized to challenge the findings that she was psychologically unfit. She alleged that there was no discussion between herself, the Director, and her union representative regarding the perceived disability which ruined her career. The appellant claimed that the perceived disability ruined her reputation and, as a result, other faculty members viewed her as a pariah. The appellant alleged that, with respect to her teaching performance, her student evaluations were good and she did not receive any substandard employee evaluations. Additionally, the appellant alleged that the appointing authority's administrators assigned her to perform administrative tasks rather than teaching assignments. The appellant stated that, although her union

representative requested a "Step One" hearing pursuant to her collective bargaining agreement, the request was denied. Additionally, the appellant alleged that she was subjected to racial discrimination over a period of several years.<sup>1</sup>

It is noted that a document dated November 19, 2015 indicates that the appellant and the Director had a conversation pertaining to the reassignment of the appellant's teaching duties and the perception that she could not teach due to a neurological diagnosis. She stated that she saw other specialists who determined that she was fit to teach. The appellant also indicated that she was forced to retire. It is noted that, in a letter dated December 4, 2015, the Director indicated that the appellant contacted him on November 30, 2015 to discuss her ADA claims and related discrimination complaint.

After an investigation was conducted, the OAAP could not substantiate that there was a violation of the State Policy. Specifically, the determination indicated that the reassignment of the appellant's teaching duties was not due to her race, but rather, based on the results of a fitness for duty evaluation. Further, it was determined that the reassignment was in the best interests of the students. Additionally, the determination stated that the appellant's other claims of theft of items from her office and the hacking of files on her computer were investigated and did not constitute a violation of the State Policy.<sup>2</sup>

On appeal, the appellant asserts that the OAAP determination is flawed as she was not interviewed during the investigation. Specifically, the appellant contends that the OAAP's Director left a voice mail message at some point to return his call. She adds that, when she returned the Director's call, she confirmed that she had filed a federal EEOC complaint regarding the alleged perceived disability that the appointing authority used in order to remove her teaching duties.<sup>3</sup> Further, the appellant states that she did not have the opportunity to explain any information to him pertaining to the complaint in this matter, as she was not interviewed during the OAAP's investigation.<sup>4</sup> Moreover, the appellant explains

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<sup>1</sup> The appellant also alleged that she filed a federal Equal Employment Opportunity Complaint (EEOC) complaint alleging that, in 2013, the appointing authority required her to be evaluated for a perceived disability. She also stated that in September 2015, the appointing authority did not provide her with a teaching schedule. She indicated that she was subjected to a violation of the ADA due to a perceived disability. The appellant also alleged that three psychiatrists evaluated her, and two of them refuted the perceived disability which was the basis relied on by appointing authority to remove her teaching duties.

<sup>2</sup> The determination also indicated that the appellant made similar complaints regarding theft and computer hacking in 2012 which were investigated by the OAAP and were not substantiated.

<sup>3</sup> The appellant notes that she pursued the EEOC complaint because a grievance that she had filed was denied by the appointing authority. She also informed the OAAP Director that she was not interested in arbitration. The appellant also notes that she added a complaint of racial discrimination in the EEOC complaint.

<sup>4</sup> The appellant asserts that, since she was not provided the opportunity to elaborate on her complaint in an interview, her allegations cannot be considered as vague or too general.

that a staff member at OAAP interviewed her regarding the allegations of computer hacking that she filed with campus police, and she did not agree with the resultant report and refused to sign it.

The appellant further asserts that the reassignment of her teaching duties constitutes discrimination on the basis of race. She states that she has been experiencing racial discrimination at the appointing authority since the beginning of her career, and at one point she was awarded financial compensation as a result of such inappropriate behavior. The appellant adds that the newspapers reported charges of discrimination against African American women at the University, and she wanted to file the EEOC complaint in support of her colleagues. Additionally, the appellant explains that she routinely observed adjunct professors teaching courses that she had asked to teach, and no one at the appointing authority congratulated her for various honors that she had received. The appellant claims that, in the summer of 2011, just before the fall semester began, she had to change her office from the second floor to the third floor, and she received no help from the university in moving 25 years of books, research, notebooks, and papers.

Additionally, the appellant contends that the OAAP's determination did not provide any information pertaining to the alleged "strange behaviors" that led to the reassignment of her teaching duties. The appellant states there is no documentation from her students or colleagues to confirm the so-called erratic behaviors. She adds that, initially, there was no indication from administration or anyone else that her behavior required her to undergo a psychiatric evaluation. However, she explains that the appointing authority informed her in August 2012 that she was required to see a psychiatrist. The appellant thought it was strange that the appointing authority sent her to a psychiatrist who specializes in drug addiction and eating disorders when she does not experience such problems. The appellant adds that she was assessed as paranoid delusional within narrow areas and found unfit to teach, and was referred to a neurologist for a brain scan. The appellant avers that the assessment was not supported by two neuropsychiatrists who later evaluated her. In this regard, she explains that a board certified neurosurgeon diagnosed her as within normal neurological functioning and the brain scans she underwent did not reveal any conditions that interfered with her cognitive functioning. The appellant asserts that, although she was authorized to return to work, she was not assigned any teaching duties.

Finally, the appellant argues that the appointing authority inappropriately reassigned her teaching duties as a result of the medical documentation received from the fitness for duty evaluation. She states that the appointing authority's reassignment was baseless as the fitness for duty evaluations were refuted by medical documentation from a neurologist. Additionally, she contends that these actions were taken in response to various police reports that she made rather than a so-called perceived disability. In this regard, the appellant states that she made

various police reports regarding theft and computer hacking that were not investigated and were apparently ignored. Further, she believes that the appointing authority used the police reports against her in support of its claims that she was unfit to teach. The appellant indicates that her employee evaluations were satisfactory and she was observed by three colleagues from the School of English who reported that she is an outstanding teacher. As such, the appellant contends that there should not have been any concern about her ability to teach. Moreover, the appellant contends that she retired after an administrator informed her union representative that she was too unstable to teach. The appellant requests financial reimbursement in the amount of two and one half years of her former salary for travel to doctor's offices, traveling during leave, and being required to undergo psychological evaluations and brain scans.

In response, the OAAP maintains that there was no evidence of a violation of the State Policy and the appellant's claims could not be corroborated. Specifically, the OAAP asserts that the OAAP Director spoke to the appellant on November 19, 2015 and November 30, 2015 regarding her complaints. It confirms that interviews were conducted with Office of Human Resources personnel and the Dean of the College of Humanities and Social Science.<sup>5</sup> The OAAP explains that in June 2013, the Office of Human Resources received reports from the Chair of the English Department and Acting Dean regarding the appellant. In this regard, such concerns included, among other things, complaints the appellant made involving the security of her office, the security of files and various items in her office, and allegations regarding colleagues in her department.

The OAAP asserts that, as result of such reports, the appellant was scheduled for fitness for duty evaluations,<sup>6</sup> and a resultant evaluation indicated that the appellant was not fit for duty. The OAAP contends that, as a result, the appellant was placed on federal Family and Medical Leave Act leave (FMLA) effective September 1, 2013 for the 2013-2014 academic year.<sup>7</sup> The OAAP confirms that the appellant also underwent a neurological medical evaluation. Further, the OAAP asserts that, at the conclusion of the appellant's FMLA leave, the medical documentation did not conclusively establish that the appellant should be returned to duty in a teaching or a non-teaching capacity. As such, it was determined that it

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<sup>5</sup> The OAAP notes that various medical documentation, campus police reports, and other documentation pertaining to the appellant's complaint were reviewed, and the Spring 2013 academic semester was the last time the appellant was assigned to teach.

<sup>6</sup> The OAAP notes that on July 30, 2013, the appellant was evaluated by a physician selected by the appointing authority.

<sup>7</sup> The appointing authority notes that two assessments indicated that the appellant "was not fit to return to work," and one assessment suggested "the university allow the appellant to return to the University and resume her teaching and student advisory responsibilities." The final assessment reported "if the appellant has been performing up to standard, and is a good college community citizen, then she is fit for duty."

was in the best interests of the students to return the appellant to work in a non-teaching capacity.<sup>8</sup>

Additionally, the OAAP asserts that the appellant complained about computer hacking concerns on various occasions from 2008 through 2015. In this regard, the appellant filed multiple complaints with the campus Police Department alleging that her computer was hacked. It indicates that she also filed numerous reports regarding missing items being stolen from her office. The OAAP adds that, in 2012, it conducted an investigation into the appellant's claims of harassment and discrimination on the basis of race as alleged in her various reports to the campus Police Department. The OAAP determined that items missing or being stolen from the appellant's office, in addition to her non-teaching assignment, did not substantiate a violation of the State Policy. Further, witnesses established that the determination to place the appellant in a non-teaching position following her return from FMLA leave was based on concerns regarding her medical fitness for a teaching assignment and was in the best interests of the students. As such, her reassignment was not based on any discriminatory factors prohibited by the State Policy. The OAAP states that the appellant did not file a grievance pertaining to her initial non-teaching assignment, but rather, she later filed a grievance regarding the continuation of her non-teaching assignment. It adds that the appellant rejected the appointing authority's offer to conduct a hearing for the grievance and she retired.

The OAAP explains that the appellant, while assigned in a non-teaching capacity, continued to work in an appropriate area of expertise, on a variety of special projects. It adds that the appellant did not experience a reduction in pay or benefits during the time she was in a non-teaching assignment. Moreover, the OAAP states that it has non-negotiable authority to assign non-teaching and teaching assignments to its employees, and the appellant did not contest her assignments through the process provided to her in her collective bargaining agreement.

In response, the appellant reiterates many of the same arguments that she previously presented. Additionally, she contends that the appointing authority's reasons for removing her from classroom duties are specious and based on non-job related police reports written by officers who are neither educators nor physicians.<sup>9</sup>

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<sup>8</sup> Regarding the decision of her reassignment to a non-teaching position, the OAAP confirms that the Dean stated that the appellant's removal from the classroom was not based on her evaluations although some evaluations showed issues with organization and classroom management.

<sup>9</sup> The appellant states that she confided with a trusted individual that she needed a rest to recuperate from a prolonged period of stress, and as a result, she was treated by a doctor who recommended that she see a psychiatrist. She adds that the psychiatrist recommended pills for her that she refused, and she only accepted the prescription so she could obtain a letter in support of her leave request. The appellant states that the psychiatrist's letter authorized her off duty for a leave of absence in Spring 2012. She asserts that in 2013, she inquired by letter to Human Resources

She adds that the appointing authority did not criticize her demeanor when her teaching duties were reassigned. Rather, the appellant states that the appointing authority mischaracterized the police reports and used them as rationale to remove her duties.<sup>10</sup> The appellant contends that the police reports did not have any effect on her classroom performance, and there is no evidence to show that her students, colleagues, or superiors objected to her behavior. In this regard, the appellant explains that she was scheduled to teach a graduate writing course in the fall of 2013 that was filled to capacity, while two other graduate courses were in jeopardy of being cancelled due to inadequate enrollment. The appellant adds that, after her forced FMLA leave, she accepted the non-teaching assignment for an academic year, and she subsequently requested the Step One hearing only after she did not receive a teaching schedule for the next academic year. The appellant indicates that, had she been afforded the opportunity for a hearing, she would have presented a compelling case to establish her claims. The appellant adds that the OAAP has not presented any evidence to disprove her claims. Moreover, the appellant asserts that the appointing authority had already planned to force her to retire in 2011.

### CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. 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). The appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C.* 4A:7-3.2(m)(3).

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about missing money from her pension that was awarded to her through a grievance, and she did not receive a reply. As such, the appellant maintains that the appointing authority made her life so uncomfortable that she was forced to retire.

<sup>10</sup> The appellant notes that her claims were not investigated by campus police. She adds that there is evidence to show that her computers were hacked for several years.

Based on the submissions of the parties, the Civil Service Commission (Commission) is satisfied that there was no violation of the State Policy. The record shows that the OAAP conducted an adequate investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. Specifically, the OAAP concluded that it could not corroborate the appellant's various allegations, and the record does not reflect evidence of discrimination on the basis of race or disability. With respect to the appellant's argument that she was not interviewed during the investigation, such information does not establish that the investigation was improperly conducted. It was at the OAAP's discretion to interview the appellant. In this regard, the OAAP was tasked with obtaining sufficient information in order to determine if a violation of the State Policy occurred. Since the OAAP clearly obtained sufficient information in support of the investigation to determine there was no violation of the State Policy, it was unnecessary to interview the appellant. With respect to the appellant's argument that she was not provided with a Step One hearing, such information does not establish her claims. The Step One hearing is subject to her collective bargaining agreement, and as such, cannot be addressed within the context of this appeal. The appellant had the opportunity to present additional information during the OAAP's investigation and there is no evidence that she did so. Nonetheless, the Commission finds that the appellant has been provided with the full opportunity to present arguments in support of her claims in this matter, and they do not change the outcome. Moreover, discrimination appeals are based on the written record and the appellant has the burden of proof.

Regarding the appellant's arguments that she was discriminated against on the basis of race, she did not provide any substantive evidence in support of her claims. Although she argues that she experienced discrimination for years, she did not provide any substantive documentation or name any witnesses in support of her claims, and did not provide a nexus to show that she was improperly reassigned on the basis of race. As discussed more fully below, the appellant was reassigned based on the results of a fitness for duty evaluation and the resultant recommendations by a physician. The fitness for duty evaluation, in and of itself, does not show that she was discriminated against. Based on the recommendations from the fitness for duty evaluation, it was at the appointing authority's discretion to reassign her duties. As such, the reassignment of non-teaching duties, in and of itself, is not sufficient to establish that she was discriminated against. With respect to her allegations of computer hacking and theft, the OAAP properly determined that the appellant's allegations pertaining to such incidents do not implicate the State Policy. Such incidents do not implicate any of the protected categories listed above. Even if the appellant's complaints regarding computer hacking and theft are plausible, such incidents, in and of themselves, are not sufficient to establish a violation of the State Policy. As noted above, the burden of proof is on the appellant. Other than the appellant's allegations in this matter, she has failed to provide any substantive information to show that she was discriminated against

based on the protected categories listed above. Additionally, the appellant did not provide a scintilla of information to show that she was subjected to retaliation and forced to retire.

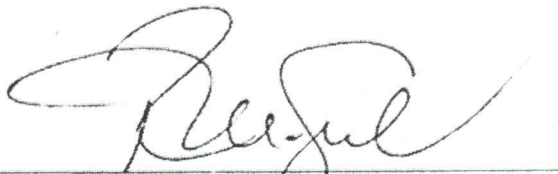
With respect to her claim of an ADA violation due to the reassignment of non-teaching duties, the record is devoid of any medical documentation from the parties. Nonetheless, as noted above, the appellant's teaching duties were reassigned as a result of a fitness for duty evaluation and recommendations from a physician who determined that the appellant was not fit for duty. The appellant has not provided any medical documentation to challenge that the fitness for duty evaluation and resultant recommendation to reassign her duties was not on the basis of her behavior at the time. Further, the appellant has not provided any medical documentation in this matter to refute the appointing authority's claims that she was unfit for teaching duty. Moreover, even assuming such documentation exists, other than her mere allegations, the appellant did not establish how the assignment to non-teaching duties violated the ADA. Moreover, the appointing authority has presented that it reassigned the appellant for legitimate work-related reasons. Accordingly, the appellant has failed to meet her burden of proof in this matter and no basis exists to find a violation of the State Policy.

#### ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>th</sup> DAY OF OCTOBER, 2017



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Robert M. Czedh, Chairperson  
Civil Service Commission



Inquiries  
and  
Correspondence

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

c: S.D.  
Charlie Williams  
Mamta Patel