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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of J.B., Department of  
Corrections

CSC Docket No. 2017-1390

Discrimination Appeal

ISSUED: **MAR 24 2017** (SLK)

J.B., a Correction Sergeant with the Department of Corrections (DOC), appeals the decision of the Commissioner, DOC, which found that the appellant did not present sufficient evidence 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).

By way of background, the appellant, a 50 year-old African-American male, filed a complaint alleging that Major T.H., a Caucasian male, Major D.G., a Caucasian female, and Lieutenant D.A., a Hispanic male, discriminated against him based on age, race, and sex/gender. Specifically, the appellant indicated that he applied for a Sergeant's position with the Central Transportation Unit (CTU), but was not selected. Instead, a younger Caucasian male was chosen<sup>1</sup> and the appellant alleged that Major T.H., through friendships and nepotism, filled all but one of five positions with younger Caucasian males who lacked the specialized experience, education, training, job knowledge and leadership skills that he possesses. The investigation included interviews with the appellant, eight witnesses, the respondents and a review of pertinent documents.

Specifically, the investigation revealed that the interview process was consistent with the appointing authority's Internal Management Procedure for panel reviews. In this case, the panel consisted of the three respondents and each independently completed a score sheet based on a single set of questions and the

<sup>1</sup> The position was first offered to the first ranked candidate who was a 39 year-old Caucasian male who declined. Then, the position was offered and accepted by the second ranked candidate who was a 39 year-old Caucasian male. The appellant was the third ranked candidate.

scoring did not involve any group decisions or discussions. Thereafter, human resources tallied and returned the score sheets to Major T.H. and the offers were made based on rankings. The respondents all denied that their scores were based on the candidates being a member of a protected class and stated that scores were primarily based on their responses to interview questions, although other aspects, such as training, certifications, and overall experience with the appointing authority, and not just with the CTU, were considered. Additionally, A.C., a Secretary, denied the appellant's allegation that she advised him that the successful candidate had been predetermined. Further, although Major T.H. acknowledged that he had work-related contact with the top candidates, he denied that he was personal friends with either Sergeant who was offered the position. With regard to the allegation that junior supervisors were on the panel rather than senior CTU supervisors, the investigation revealed that for this round of interviews, the panelist had to hold the rank of Lieutenant and above. Major T.H. also indicated that he tries not to schedule the same panelists for each round of interviews. Additionally, while Major D.G. was not a member of the CTU, there was no policy that mandated that panelists must work for the CTU. In response to the appellant's accusation that the panel lacked diversity, the investigation found that the panel consisted of a Caucasian male, a Caucasian female, and a Hispanic male. Regarding the appellant's other allegations, the investigation revealed that the questions were related to the duties of a CTU Sergeant, the questions were not asked in a confusing manner, and there was no evidence that the panelists appeared hostile, uninterested, or in a rush. The investigation also found that African-Americans have in the past and currently hold supervisory positions in the CTU and there are currently African-American Communication Operators within the CTU. In regard to the appellant's comment that Major T.H. discriminates against staff who have prior CTU experience, the investigation determined that prior CTU experience is not a protected class and not a requirement for the position. Rather, selection was based upon a totality of qualifications including years of experience with the appointing authority.

On appeal, the appellant reiterates his argument that the two younger Caucasian males who were offered the position lacked the required experience and that he has 18 years of prior experience in the CTU. The appellant states that he received the highest evaluations in his unit and that Lieutenant H. requested him to assist during a possible evacuation at Southern State due to his skills and expertise. However, Lieutenant H. filed a State Policy complaint against Major T.H. and he claims that this resulted in Major T.H. retaliating against Lieutenants H. and C. by removing them from the interview and selection committee for the CTU position. Additionally, the appellant argues that Major T.H. went against past practice and used an outside Major, D.G., and a junior Lieutenant, D.A., to conduct interviews. He provides that Major D.G. has no direct involvement with the CTU and never worked in this specialized unit and Lieutenant D.A. has a prior relationship with Major T.H. The appellant indicates that there were at least two

other Lieutenants in the CTU that could have been used in the selection process and that Major T.H. is reported to have stated, "I will not hire anyone back who use to work here." He states that Major T.H. has a previous "working relationship" with the two males selected for the position, Sergeants R.M. and T.J. Further, the appellant presents that Sergeants R.M., T.J., and Ma. are all volunteer fireman and that Lieutenant D.A. is a supervising member of a team that both Sergeants R.M. and T.J. are on. He also claims that the CTU has a lack of African-American males as Custody Supervisors.

Although given the opportunity, the appointing authority did not provide any additional argument or documentation for the Civil Service Commission (Commission) to review in this matter.

In a supplemental submission, the appellant reiterates his previous arguments and claims and asserts that it is unreasonable to think that the panel did not have a group discussion about the interviews, the scoring system is subjective, and neither selected candidate had Emergency Vehicle Open Course (EVOC) certification at the time of their interview. He also states that A.C. is Major T.H.'s Secretary, so he assumes she feared retaliation when she denied advising him that candidates were predetermined. He contends that this is the first time that a non-CTU supervisor had been on a panel for a CTU Sergeant position. The appellant believes that the purpose of using panel members from outside the CTU was to manipulate the scoring. Further, although there may be African-American males in the CTU who hold civilian supervisory positions, his complaint involves African-American supervisory law enforcement officers in the CTU.

### CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that the State is committed to providing every State employee a work environment free from prohibited discrimination based on age, race, and sex/gender.

*N.J.A.C.* 4A:7-3.2(i) provides that at the EEO's discretion, a prompt, thorough, and impartial investigation into the alleged discrimination will take place.

*N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Commission has conducted a review of the record and finds that the appellant has not established that Major T.H., Major D.G., or Lieutenant D.A. violated the State Policy. The appellant alleged that two younger Caucasian males were ranked higher than him and offered the subject position because of their age

and race. However, the investigation, which consisted of interviews with the appellant, eight witnesses, the respondents, and a review of relevant documents, revealed that the interview process was consistent with Internal Management Procedure and that each respondent independently scored the questions. Further, it is noted that neither prior CTU experience nor possessing an EVOC certificate at the time of the interview were requirements for the position. The appellant has not provided any evidence that the respondents discriminated against him in the interview and selection process in violation of the State Policy. Further, the fact that the three-member panel did not specifically have an African-American male on it does not mean that the panel lacked diversity. In this regard, the panel consisted of a Caucasian male, a Caucasian female, and a Hispanic male. Moreover, the mere fact that the respondents were not African-American males does not establish that they had predetermined not to select African-American male candidates. Rather, A.C. denied that she advised the appellant that the candidates were predetermined prior to the interview and the investigation found that the interview process was done in accordance with Internal Management Procedures. Regardless, mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. See *In the Matter of T.J.* (CSC, decided December 7, 2016).

With respect to the appellant's allegation that Major T.H. only hired candidates who had not previously served in the CTU, prior service in the CTU is not a requirement for the position and is not protected class. Similarly, the appellant's complaints that the panel consisted of an employee who had not served in the CTU, that Major T.H., the panel, and/or his staff had personal or past working-relationships with the selected candidates, and that the panel had a junior supervisor are not claims that touch the State Policy.

Accordingly, the Commission finds that the Equal Employment Division's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

#### 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 22<sup>nd</sup> DAY OF MARCH, 2017



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