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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

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

Discrimination Appeal

CSC Docket No. 2017-2606

ISSUED: SEP 21 2017 (HS)

D.J., a Charge Nurse, 12 Months with Woodbine Developmental Center (WDC), Department of Human Services, appeals the determination of the Assistant Commissioner, Legal Affairs, which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, an African-American, filed a complaint with the Office of Equal Employment Opportunity (EEO) against K.H., Director of Nursing Services 1, Developmental Disabilities, a Caucasian, alleging discrimination on the basis of race. The appellant alleged that K.H. failed to promote her to the position of Scheduling Coordinator due to her race. In response, the EEO conducted an investigation during which it conducted three interviews and reviewed six relevant documents. After its investigation, the EEO did not substantiate a State Policy violation by K.H. In this regard, the EEO noted that the selected candidate, N.H., was appointed to the position based on seniority. Specifically, on August 14, 2010, the appellant received a provisional appointment, pending open competitive examination procedures, to the title of Charge Nurse, 12 Months. On April 7, 2012, the appellant became permanent in that title. On March 10, 2012, N.H. received a permanent appointment to the noncompetitive title of Staff Nurse, 12 Months, which required that she possess the skills or specific licensing or certification in lieu of an examination. Subsequently, N.H. was appointed to the Scheduling Coordinator position. When N.H. later returned to her previous assignment from her appointment as Scheduling Coordinator, the Scheduling Coordinator position

was not reposted because it was amended from a full-time to a part-time position and the job duties were absorbed by the Nursing Services Clerk. The EEO also noted that K.H. played no role in selecting the candidate.

On appeal to the Civil Service Commission (Commission), the appellant states that once N.H. was appointed to the position of Scheduling Coordinator, the appellant initiated the grievance process. The appellant claims that when N.H. decided that the position was not for her two days after starting the position, K.H. chose to place a temporary service employee registered nurse in the position and then changed the position to a part-time position in an attempt to keep the appellant from the position.

In response, the EEO states that on August 11, 2016, a vacancy was posted at WDC for the Scheduling Coordinator position in the Nursing Department. The position was open to current permanent full-time employees with one year of continuous permanent service in the title of either Charge Nurse or Staff Nurse. Six employees, including the appellant and N.H., applied. The EEO reiterates that the appellant became permanent in the title of Charge Nurse, 12 Months on April 7, 2012,¹ while N.H. received a permanent appointment to the noncompetitive title of Staff Nurse, 12 Months on March 10, 2012.² Since N.H. had the highest seniority of the six applicants, she was selected. Therefore, the EEO maintains that N.H.'s appointment was made by the WDC Human Resources Office, not K.H., based on the applicants' seniority as reflected in personnel records. The EEO also reiterates that when N.H. returned to her previous assignment, the Scheduling Coordinator position was not reposted as the position was amended from a full-time to part-time position, and the duties were absorbed by the Nursing Services Clerk.

In reply, the appellant notes that she became permanent in the title of Charge Nurse, 12 Months on April 7, 2012, while N.H. became permanent in the title of Charge Nurse, 12 Months on March 9, 2013. The appellant thus maintains that her seniority was greater. She adds that it was K.H. who reassigned the duties of the Scheduling Coordinator to the Nursing Services Clerk. The appellant states that the Scheduling Coordinator position has been held by a full-time registered nurse for as long as she has been employed at WDC. She maintains that the position would have remained full-time and occupied by a registered nurse if N.H. had not changed her mind. As to a remedy, the appellant requests appointment to the Scheduling Coordinator position. In support, the appellant submits a seniority list for WDC by title and date as of October 5, 2016, among other documents.

¹ Agency records confirm that the appellant became permanent in the title of Charge Nurse, 12 Months effective April 7, 2012.

² Agency records confirm that N.H. became permanent in the title of Staff Nurse, 12 Months effective March 10, 2012.

In reply, the EEO argues that the seniority list provided by the appellant is not relevant to determine the seniority for the Scheduling Coordinator position since the list does not reflect the seniority for employees serving in the title of Staff Nurse who were also eligible for the position. The EEO states that both the Charge Nurse and Staff Nurse titles are registered nurse titles. It maintains that N.H. was appropriately appointed based on her higher seniority, a legitimate, non-discriminatory reason. The EEO adds that the Scheduling Coordinator position was amended from a full-time to a part-time position and the duties were absorbed by the Nursing Services Clerk because it was discovered that the position did not require seven hours to complete a nursing schedule. The EEO further argues that it is the appellant who has the burden of proof in this matter, yet she has failed to rebut its determination.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

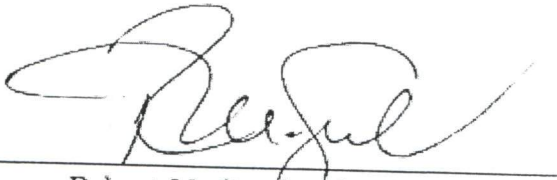
The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation failed to establish that the appellant was discriminated against or harassed in violation of the State Policy. The EEO appropriately analyzed the available documents and interviewed witnesses in investigating the appellant's complaint and concluded that there was no violation of the State Policy based on the appellant's race or any other protected category. In this regard, the investigation revealed that K.H. played no role in selecting the appointee to the Scheduling Coordinator position. The position was open to employees serving in the title of either Charge Nurse or Staff Nurse and was awarded to the applicant who first became permanent in either one of these titles, a non-discriminatory reason. The investigation also revealed that the Scheduling Coordinator position was amended to a part-time position and the Nursing Services Clerk took over the associated duties since it was discovered that the position did not require a full-time schedule to complete those duties, also a non-discriminatory reason. Accordingly, the investigation was thorough and impartial, and no substantive basis to disturb the EEO's determination has been presented.

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 20TH DAY OF SEPTEMBER, 2017



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