STATE OF NEW JERSEY

In the Matter of G.H., Department of Corrections	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2018-235	:	Discrimination Appeal

ISSUED: MAY 24, 2018 (JET)

G.H, a Correction Lieutenant with the Department of Corrections, appeals the determination of the Director, Equal Employment Division, 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).

G.H., a Caucasian male, filed a complaint with the Equal Employment Division (EED), Department of Corrections, alleging that he was subjected to retaliation by T.H., a Correction Major.[1] Specifically, the appellant alleged that in September 2015, he previously filed a separate EED complaint against T.H., and since that time, T.H. has singled him out, undermined his authority, and changed his work hours in an attempt to force him out of his current position as Road Lieutenant. The appellant alleged that T.H. created difficult working conditions and such conduct was witnessed by CTU staff, as he repeatedly showed preferential treatment toward certain individuals. In this regard, T.H. created a position for D.A., a Correction Lieutenant.

Additionally, the appellant alleged that T.H., by e-mail dated November 4, 2015, changed the procedures regarding the scheduling of interstate trips which

[1] The appellant stated that he was assigned to the Central Transportation Unit (CTU) in July 2012, and he served as a Desk Lieutenant from July 2012 through July 2015, and he is currently serving as a Road Lieutenant. He added that T.H. was assigned to the CTU in April 2015 following a Correction Major's retirement.

undermined the appellant's authority.[2] The appellant indicated that only a small group of officers from the Interstate Escort Unit (IEU) were selected for the trips and only a few Correction Officers participated in such trips every two years. The appellant complained that T.H. sent an e-mail stating T.M.N., a Correction Sergeant,[3] was scheduled for training in IEU on November 13, 2015. The appellant alleged that T.M.N. left the training area, returned briefly, and she left again and did not return. The appellant complained that he later observed T.M.N. in T.H.'s office, and she was subsequently assigned to road duty despite that she was scheduled for training.

Additionally, the appellant alleged that T.H. sent an e-mail to every Sergeant in CTU instructing them to appear at the start locations of their subordinates at the beginning of their shifts, which the appellant viewed as disrespectful toward himself and K.U., a Correction Sergeant.[4] Further, the appellant also alleged that, although he authorized K.U. to report to Central Office Headquarters (COHQ) as there reportedly was a problem with the radios, S.H. subsequently ordered K.U. to go to another assignment. Further, the appellant alleged that, during the first supervisors meeting, although T.H. informed the appellant that he was in charge of various changes pertaining to road supervisors, T.H. later changed the appellant's assignment. The appellant added that, on January 8, 2016, T.H. issued an e-mail indicating that he would approve vacation time for Correction Officers in the IEU, despite that vacation time was usually approved by the IEU supervisor. In this regard, the appellant indicated that T.H.'s approval of vacation time resulted in the appellant failing to receive one week of vacation time that he had selected. The appellant also alleged that an interstate inmate transfer was scheduled to take place on February 23, 2016 which was a high risk assignment. However, the transfer was completed without the presence of a supervisor pursuant to T.H.'s orders[5] which jeopardized the safety of the individuals involved and constituted a policy violation.[6] The appellant added that, although he assigned J.M., a Correction Sergeant[7] to assist with the high risk transfer, the appellant was subsequently advised by T.H. and a Lieutenant that there was no concern that a supervisor was not assigned to the transfer.

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[2] The appellant alleged that the policy pertaining to interstate trips was originally put in effect by the prior Correction Major, J.P., who had retired.

[3] T.M.N. is now serving as a Correction Lieutenant.

[4] The appellant indicated that he was K.U.'s direct supervisor.

[5] The appellant admitted that the transfer was completed without incident.

[6] The appellant claimed that he is the first supervisor in charge of the IEU to be told that he could not participate in interstate trips. In this regard, prior IEU supervisors were not told that they could not go on interstate trips. The appellant claimed that the April 7, 2016 e-mail was prompted by a complaint by Senior Correction Officer A.B. to H.T., and he alleged that A.B. became agitated when she was not assigned to an interstate trip to Puerto Rico and he complained to T.H.

[7] J.M. is now serving as a Correction Lieutenant.

The appellant alleged that although A.B., a Senior Correction Officer, was assigned to train in the IEU in March 2016, T.H. failed to inform the appellant of the training. The appellant also claimed that T.H. sent an e-mail dated March 18, 2016 instructing the appellant to report to the EED Office on Monday, March 21, 2016. The appellant alleged that he was scheduled off from work on March 21, 2015, and T.H. purposefully waited until the end of the day to send the e-mail to the appellant. The appellant also reported that T.H. sent an e-mail reassigning M.P., a Correction Sergeant,[8] as the head of IEU, and the appellant indicated that he was in charge of IEU until M.P.'s appointment. The appellant added that T.H. changed his work hours despite that he is aware that such a change would cause a hardship as the appellant's son has autism and goes to appointments three days week.[9]

The EED conducted an investigation, including interviewing 15 witnesses and reviewing relevant documentation, and determined that the allegations were not substantiated. Specifically, the EED determination indicated that the witnesses confirmed that T.H. implemented positive changes to the CTU and, as a result, the unit runs more efficiently and the assignments are more evenly divided. Further, the EED did not substantiate that T.H. singled the appellant out in the workplace. In this regard, with respect to the policy pertaining to the interstate trips, it was confirmed that T.H., as Correction Major, had the authority to change the policy in order to make it more effective. In this regard, T.H. confirmed at the time of his interview that the goal in changing the aforementioned procedure was to provide various Correction Officers with an opportunity to be scheduled for the trips on a rotating basis. The EED adds that the witnesses advised that the opportunity to be included on the trips was a welcomed change. Further, the investigation revealed that T.M.N. trained with the appellant on November 17, 2015 in IEU, and she responded to a medical code at 12:00 p.m. The appellant was aware that she had responded to the code. Additionally, the EED found that T.H, as Correction Major, was in charge of training and scheduling approvals and he was not required to notify anyone in CTU, including his subordinates, of adjustments to any schedules. Rather, T.H. confirmed that subordinates were required to notify him when they requested training as he encouraged everyone to participate in training.

The EED's determination further indicated that T.H. stated that K.U. failed to report where his subordinates where assigned on occasion, and in an attempt to avoid singling out K.U., an e-mail was sent to every supervisor to correct the situation. The EED adds that, with respect to the appellant's claims regarding vacation time, H.T. confirmed that the e-mail pertaining to the vacation schedules did not apply to supervising officers including the appellant, but rather, only applied to Correction Officers and their vacation schedules. T.H. confirmed that

[8] M.P. is now serving as a Correction Lieutenant.

[9] The appellant indicated that T.H. was aware that the appellant's son has autism as the appellant discussed the subject in common areas of the office.

there are only a few employees who are knowledgeable about handling Operations and IEU, and he was unaware that the schedule changes would have any adverse effect on the appellant's request for vacation time.

Additionally, with respect to the high risk inmate transfer, the appellant admitted that he had no documentation to show that the assignment required the presence of a supervisor and was considered high risk. The appellant also acknowledged that supervisors generally do not go on such interstate assignments. Further, a review of H.T.'s April 7, 2016 e-mail indicated that supervisors may go on interstate trips in emergency circumstances or when approved by the Major. Additionally, a review of the April 7, 2016 e-mail provided, in part, that while a rotating list of officers is maintained, changes to the list might be considered for operational effectiveness. Further, T.H. confirmed that, as Shift Commander, D.A. had the discretion to decide how the inmate transfer would be conducted. T.H. also stated that he was unaware that the appellant had any concerns regarding the inmate transfer, except that another Lieutenant other than himself had decided how the transfer would be completed. Further, T.H. confirmed that, with respect to the e-mail instructing the appellant to appear at the EED Office, he was not aware the appellant was scheduled off on the following Monday, and since the appellant is frequently on road assignments, T.H. does not see him often. The appellant acknowledged that M.P. traveled for training purposes and, with respect to A.B., the appellant advised her that another officer had been selected for the trip which T.H. supported.

With respect to the change in the appellant's hours, T.H. confirmed that it was due to the need of additional supervisors that the hours of the position of Road Lieutenant would be changed from 5:00 a.m. to 1:00 p.m. The e-mail provided that the hours for the position of Administrative Lieutenant/ILP were changed to 7:00 a.m. to 3:00 p.m. The appellant acknowledged that the change was only to his hours and not his assignment as he is still the Road Lieutenant. Further, the investigation revealed that the changes were made to CTU so the unit would run more effectively, as T.H. advised that there was an increase in the workload on second shift and only one Road Supervisor was scheduled. In contrast, there were four supervisors on first shift, all of whom were off duty by 2:00 p.m. Moreover, T.H. provided that the 2:00 p.m. to 4:00 p.m. shift is the busiest time of day; there have been some serious accidents where supervisors responded from home as they were already off duty; due to the previous work schedules, the appellant and the Administrative Lieutenant were not in the office and available to answer inquiries from executive staff and the Public Information Officer; it was discovered that other Lieutenants who were previously assigned to the appellant's position had worked later start times than the appellant; and the assigned hours were actually 6:00 a.m. to 2:00 p.m., but the appellant was working 5:00 a.m. to 1:00 p.m. Finally, the EED determination found that T.H. confirmed that the appellant was offered the Desk Lieutenant's position with a start time of 4:00 a.m. The appellant confirmed that he

declined the position and noted that he did not want to accept it because "the Major likes to blame people when things go wrong, especially at the desk." It is noted that the appellant acknowledged that overtime has significantly decreased since T.H. has been in charge at CTU.

With respect to C.R.'s reassignment, T.H. denied that allegation and he confirmed that the e-mail was sent to all of the Lieutenants and Lieutenant R.K. was selected for the position. With respect to the allegation pertaining to Sergeant M.P., T.H. advised that the specific position had been a Sergeant's position prior to the appellant taking over the duties, and the appellant's assignment was only temporary. T.H. indicated that Sergeant D.H. previously held the position, however, she retired. However, T.H. was unable to name a permanent replacement for D.H. until she retired. As such, he assigned the appellant to temporarily handle such work until a new Sergeant could be appointed. However, the EED referred the matter to the Central Office for administrative review.

On appeal, the appellant asserts that the EED's finding that T.H. changed his hours in order to assign a second supervisor for road coverages is not true as his current complaint indicated that Road Supervisor Sergeant T.M.N. was assigned work hours between 10:00 a.m. and 6:00 p.m. He explains that T.M.N. did not work those hours until after the appellant filed his prior EED complaint. The appellant adds that it is also not true that C.H., a Correction Sergeant,[10] was assigned as the Supervisor of the IEU. Further, the appellant contends that, contrary to the EED's findings, he advised T.H. of his concerns about the interstate inmate transfer. The appellant adds that he was unaware that Sergeant T.M.N. was responding to a medical code when she left training on November 13, 2015. However, he does not have a record of a medical code that occurred on that date as far as he is aware. The appellant contends that T.H., as Major, should have been aware that the vacation schedules he authorized would have a negative impact on the appellant's request for vacation time. The appellant adds that the EED did not investigate his allegation that, after he had submitted a report to T.H. indicating that C.H. was disrespectful toward him, it appeared that T.H. notified C.H. of the report and, as a result, C.H. filed an EED complaint against the appellant.

Additionally, the appellant states that the EED did not conduct a fair and impartial investigation. Specifically, the appellant questions who the witnesses were and why the EED selected them for an interview, and he questions who specifically selected them for an interview. The appellant adds that T.H. should not have selected the witnesses. The appellant asserts that, contrary to the EED's claims, T.H. did not create a position for D.A., but rather T.H. attempted to reassign the appellant from his position for D.A.'s benefit. The appellant claims that he does not disagree with T.H.'s style of management, but rather, the EED should have investigated the other issues listed in his complaint. The appellant also contends

[10] C.H. is now serving as a Correction Lieutenant.

that the EED did not issue a determination pertaining to his allegations until over a year had passed.[11] However, no action was taken and in fact he was informed sometime later after filing his second complaint in this matter that around the time T.H. was found to have violated the policy, the appointing authority's sanctions for such an offense were changed. To his knowledge, T.H. is the first person in an administrative position to be found to have violated the policy. The first 16 years of his career he worked in an environment free from hostility, abuse, and retaliation, but he has been subjected to two and a half years of inappropriate behavior in his current unit. The relief he is seeking is to be free from constant worry and similar conduct in the future.

Despite being provided with the opportunity, the EED did not provide a response to the appellant's appeal.

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).

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that he was subjected to discrimination or retaliation in violation of the State Policy. The record reflects that the EED conducted a proper investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. The underlying determination was correct when it determined that there was no violation of the State Policy. The appellant's

[11] The appellant states that he filed a prior EED complaint against T.H. that was substantiated.

arguments on appeal and the allegations of his complaint do not evidence that he was discriminated against based on any of the above listed protected categories listed in the State Policy. Additionally, a review of the appellant's allegations do not reveal any information that implicates the State Policy, including that he was retaliated against based on his filing of prior discrimination complaint. In this regard, the witnesses and the evidence did not substantiate that the appellant was singled out, that his authority was undermined, that the appellant was improperly reassigned, or T.H. created positions for other employees in violation of the State Policy.

With respect to the appellant's arguments that T.H. changed various policies, the EED confirmed that T.H., as the Correction Major, was authorized to make such policy changes. The witnesses also confirmed that the policy changes benefitted the work place and, as a result, various officers were provided with the opportunity to participate in interstate trips. As such, the policy changes were done for legitimate, work-related business reasons that do not invoke the State Policy. Additionally, the appellant's claims pertaining to the interstate inmate transfer were not substantiated. The appellant provided no evidence to show that the inmate transfer was considered a high-risk transfer or that it was improperly conducted. Regardless, the EED confirmed that the transfer was properly completed. Moreover, since the appellant was not in charge of the procedure, his concerns about how the transfer was completed, in and of itself, does not show that he was retaliated against.

Additionally, none of the e-mails sent by T.H. to the appellant and various other employees show that the appellant was singled out or that he was retaliated against in violation of the State Policy. The Commission is satisfied that T.H.'s e-mails were sent for legitimate, work-related business reasons. The appellant's argument that he was instructed by e-mail to report to the EED on his scheduled day off does not, in and of itself, show that he was retaliated against. T.H. confirmed that he was unaware that the appellant was scheduled off on the day he was instructed to report to the EED. Regardless, the record does not reflect that the appellant was unable to reschedule that meeting with the EED.

With respect to the appellant's argument that he was not approved for a week of vacation time, that fact, in and of itself, does not show that he was retaliated against. In this regard, it is at his supervisor's discretion to approve vacation time based upon the business related needs of the appointing authority. Indeed, since the appellant is employed in a para-military setting where he works with a population of prison inmates, his vacation time may be changed based upon the needs of the appointing authority. Moreover, the appellant did not provide any evidence in support of his claims that T.H. was aware that the appellant's son has autism or that T.H. specifically retaliated against the appellant as a result of that information. Moreover, the record does not reflect that C.H. filed a separate EED

complaint against the appellant as a direct result of T.H.'s actions. Other than the appellant's tenuous claims, there is no information to show that T.H.'s actions as alleged by the appellant were anything other than him exerting his authority as a Correction Major. Even if the appellant disagreed with T.H.'s style of management, the Commission has consistently found that 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).

With respect to the appellant's arguments regarding the EED's choice of witnesses who were interviewed, it is at the EED's discretion to interview as few or as many witnesses as it determines necessary in order to complete an investigation. In this matter, the EED interviewed 15 witnesses and a violation of the State Policy was not substantiated. The appellant has provided no evidence on appeal to refute the witnesses. Additionally, while the EED has not confirmed that T.H. named any witnesses to be interviewed, even if T.H. had named witnesses, it was at the EED's discretion to interview those individuals in order to complete the investigation in furtherance of the appellant's complaint. Moreover, there is no evidence to show that T.H. solicited any witness statements at the time of the investigation.

With respect to the appellant's claims of an untimely investigation, *N.J.A.C.* 4A:7-3.2(l)2 provides that the time frame for completion of the investigation and issuance of the final letter of determination shall be no later than 120 days after initial intake of the complaint is made which may be extended up to 60 days. In this case, the EEO's determination letter is dated June 16, 2017, and there is no conclusive evidence as to when the appellant filed his complaint. However, it appears that the appellant filed the EED complaint on November 4, 2015. As such, it appears that over one and one-half years had passed before the EED determination was issued in this matter. The EED does not provide any information regarding why the investigation was not completed within the proper time frame. The Commission is concerned that the EED determination in this matter was not issued on a timely basis and it is warned that similar violations of the rules may result in sanctions. Nonetheless, while it would have been ideal to finalize the investigation within the regulatory time frame, based on the detailed response contained in the EED's determination, in addition to considering the numerous witnesses that were interviewed, the Commission is satisfied that the EED conducted a thorough and impartial investigation and, as such, the delayed issuance of the EED determination did not have an adverse outcome in this matter.

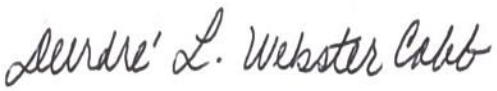
Other than the appellant's allegations in this matter, he has failed to provide any evidence that he was discriminated or retaliated against in violation of the State Policy. Accordingly, he has not satisfied his burden of proof in this matter.

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 23rd DAY OF MAY, 2018



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