



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of W.Q., Richard
Stockton State University

CSC Docket No. 2018-1466

Discrimination Appeal

ISSUED: MAY 25, 2018 (SLK)

W.Q., an Associate Professor in Hospitality and Tourism Management Studies (HTMS) at Richard Stockton State University, represented by Daniel M. Kurkowski, Esq., appeals the decision of the Executive Vice President/Chief of Staff (EVP) which did not substantiate his allegation to support a finding that he had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, W.Q., who is blind, filed a complaint with the Office of Institutional Diversity and Equity (OIDE) alleging that D.A., an HTMS Associate Professor, discriminated against W.Q. in his pursuit of tenure, a salary rate adjustment, and a promotion to be a full professor and otherwise created a hostile work environment against him due to his disability by influencing other members of the HTMS Program Review Committee (PRC) to vote against his promotion to full professor. Specifically, in April 2016, W.Q. complained to the EVP that M.S., a HTMS Professor and its Program Coordinator, C.W., a now retired HTMS Professor, and D.A. violated the appointing authority's Code of Conduct by retaliating against him because of his leadership in making curriculum changes that eliminated a course. Thereafter, in May 2017, W.Q. filed a State Policy complaint against D.A. alleging that she had a deep-seated resentment of his handicap and she colluded with M.S., C.W. and B.T., a HTMS Professor, to submit negative evaluations against him. The investigation consisted of interviewing several witnesses, reviewing documentation related to the standards for faculty

evaluation, and several other documents pertaining to the pursuit of tenure, salary range adjustment, and promotion. However, none of the witnesses could substantiate the allegation and the review of the documentation did not indicate that W.Q.'s disability was a factor in his faculty evaluation. Instead, the investigation revealed that W.Q. failed to meet one or more of the standards for promotion to full professor.

On appeal, W.Q. cites examples of alleged discriminatory behavior against him. For example, he states that M.S. has refused to meet or speak with him since December 2014. Additionally, W.Q. alleges that M.S., C.W., and D.A. colluded together and issued misleading statements against him on an official evaluation during his tenure evaluation. W.Q. asserts that a denial of his tenure would have resulted in his termination. However, he indicates that faculty outside the HTMS and the appointing authority's administration overruled the PRC and his tenure was granted. W.Q. provides that he also submitted a Code of Conduct complaint against M.S., C.W., and D.A. to the EVP who dismissed his complaint in a 15 minute meeting without an investigation. Even though W.Q. did receive tenure and a salary range adjustment, he was not promoted to a full professor and he claims that the appointing authority is still systematically discriminating against him in other ways. For example, W.Q. presents that his immediate supervisor, Dean J.W., stripped a course from him and gave it to D.A. and then later admitted that she lied to him about it. Further, in two subsequent evaluations since his Spring 2016 tenure evaluation, M.S., C.W., and D.A. rated him as "not acceptable" while all other evaluators rated him as "excellent." In April 2017, W.Q.'s student assistant reported that D.A. made discriminatory remarks against him and the student assistant provided the OIDE a written statement and agreed to be interviewed. The statement indicated that D.A. stated that it was not fair that W.Q. received a student assistant to help him in his classroom simply because he was blind and that she wished that she could come up with some type of excuse so that she could get an assistant. W.Q. argues that D.A.'s statement is evidence that she has animus towards him due to his disability. W.Q. states that the appointing authority will not release its 2017 investigation regarding his State Policy complaint and therefore, he cannot analyze the determination without some discovery.

In response, the appointing authority presents that W.Q. filed a State Policy complaint only against D.A. and not against the members of the HTMS Program and the investigation did not substantiate the allegations. Further, W.Q.'s letter to the EVP in April 2017 indicates that he was retaliated against by HTMS faculty members because of his leadership in making curriculum changes. Accordingly, the OIDE did not investigate this complaint because the asserted retaliation was not based on his disability or another protected class and therefore, did not touch the State Policy. The appointing authority emphasizes that his complaint was only against D.A. so it did not investigate complaints against M.S., C.W. and J.W. which he now states on appeal. It states that M.S., C.W., and D.A. denied that they

colluded together and indicated that as PRC members, they are expected to cast votes as the first level of review in the tenure process. The appointing authority presents that as part of the next level of review, W.Q. had the opportunity to submit supplemental material and the PRC did not have the opportunity to review the supplemental materials under the current tenure process. However, the subsequent reviewers, who approved his tenure, did have the opportunity to review his supplemental material. The appointing authority refutes W.Q.'s claim that the EVP dismissed his State Policy claims in a 15 minute meeting. On the contrary, the matter was referred to the OIDE for investigation. Further, during the investigation, the student assistant stated that D.A. did not say anything about W.Q.'s disability nor did she make any derogatory remark about him. Therefore, the appointing authority found that this statement did not demonstrate animus towards W.Q. The appointing authority indicates that it did not release its investigate report as it is confidential under the State Policy.

In reply, W.Q. presents that one of his assigned assistants described an incident on February 28, 2018 where C.C., a HTMS Associate Professor, made comments about W.Q.'s assistants and accused him of plagiarism, academic dishonesty, and unethical behavior to an entire class. W.Q. asserts that D.A. and C.C. are friends and implies that this is further evidence that D.A. continues to influence others to be hostile towards him due to his disability. He submits his student assistant's statement which says that D.A. said something like, "What I need is someone like you to help me, and I need to come up with an excuse to get an assistant. It's not fair that W.Q. has you all to himself. I didn't even know that Stockton hired teaching assistants." Further in the statement, the student assistant says, "I just casually laughed it off and waited for class to start...She was speaking at a normal volume." W.Q. reiterates that his HTMS colleagues have on multiple occasions since 2016 rated his performance as "not acceptable" while most other evaluators rate his performance as "excellent." W.Q. submits the PRC's October 6, 2017 Evaluation and Recommendation which indicated that it did not recommend W.Q. for a promotion to full professor because he did not meet the service requirement. Although this document does not state which professors voted against his promotion, D.A., along with M.S., B.T., and another professor, signed the document. W.Q. cites case law and the New Jersey Law Against Discrimination in support of his claim that he has been subjected to a hostile environment. W.Q. seeks a hearing and various remedies and accommodations.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as disability.

N.J.A.C. 4A:7-3.1(h) states, in pertinent part, that retaliation against any employee who alleges that she or he was the victim of discrimination/harassment is prohibited by this policy.

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 harassment or 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 Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that W.Q.'s allegations that D.A. subjected him to disability discrimination cannot be substantiated. With respect to his retaliation claim, W.Q. indicated that the reason for the alleged retaliation was due to his leadership in making curriculum changes that eliminated a course. However, this allegation does not touch the State Policy as the alleged retaliation is not based on his membership in a protected class, *i.e.* his disability. Further, a review of the PRC document which did not recommend his promotion to a full professor, indicated that W.Q. did not meet the service requirement for promotion. While W.Q. may disagree with this assessment, disagreements among 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). Additionally, the investigator reviewed the student assistant's statement and interviewed the student assistant and found that D.A. did not have personal animus towards W.Q. due to his disability. Instead, the investigation revealed that the student assistant indicated that D.A. did not mention D.A.'s disability or make derogatory remarks about his disability and was simply informing the student that she needed an assistant like her to get work done. Therefore, D.A. has not submitted any evidence that the reason for D.A.'s actions toward him were based on his disability. 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). Therefore, the Commission finds that the OIDE's investigation was prompt, thorough and impartial and W.Q. has not met his burden of proof.

Some other issues need to be addressed. W.Q. complains that he did not get a chance to review the appointing authority's investigative report and therefore needs discovery and requests a hearing. Under *N.J.A.C.* 4A:7-3.2(j) and (k), the investigative report is an internal document for the State agency's head or designee to review and is not intended for review by a complainant. Further, the Commission finds that the appointing authority has sufficiently summarized its investigation by explaining that it interviewed numerous witnesses and identified various documents that it reviewed regarding its policies and procedures pertaining to W.Q.'s pursuit of tenure, salary adjustment, and promotion. Most significantly,

the appointing authority explains that it reviewed the student assistant's statement that W.Q. alleges demonstrates that D.A. had personal animus towards him based on his disability. However, after reviewing the document and interviewing the student assistant, the investigation revealed that D.A.'s statement was merely an expression to the student assistant that she could use an assistant like her. Therefore, the Commission does not find it necessary to compel production of the investigation report in this matter. The Commission is satisfied that W.Q. 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 W.Q.'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).

With respect to W.Q.'s request for a hearing, a hearing is only required where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing. *See N.J.A.C. 4A:2-1.1(d)*. As W.Q. has offered no witness or any documents that can potentially confirm that D.A.'s actions were based on his disability, the Commission concludes that a hearing is not required since there are not any material and controlling facts in dispute. *See LoStocco, supra*. In regard to the case law that W.Q. cites concerning a hostile environment and the New Jersey Law Against Discrimination, this matter is governed by the State Policy and W.Q. has not submitted any evidence that can confirm that D.A.'s actions were based on W.Q.'s membership in a protected class. In reference to W.Q.'s allegations that M.S., C.W., B.T. and J.W. also discriminated against him, the OIDE did not address these claims as W.Q.'s complaint was only against D.A. Since these claims may implicate the State Policy, the appellant should formally file a new complaint with the OIDE containing those allegations to allow it to undertake an investigation.¹ Further, on appeal, W.Q. has made several accommodation requests due to his disability. The Commission has no jurisdiction regarding such requests and they must be presented to the appointing authority. After its determination on such requests, if W.Q. feels that any accommodation request that he has made has been unreasonably denied, he may also file a complaint with the OIDE so that these allegations may be investigated.

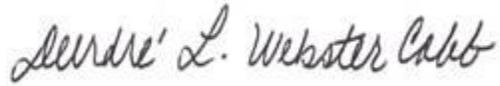
ORDER

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.

¹ It is noted that C.W. is now retired and therefore it may not be feasible for the OIDE to investigate this allegation. Further, W.Q. alleged on appeal that C.C. discriminated against him and he has already filed a complaint with the OIDE for this matter.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23rd DAY OF MAY, 2018



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