



STATE OF NEW JERSEY

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

In the Matter of A.R., Office of
Information Technology

CSC Docket No. 2018-441

Discrimination Appeal

ISSUED: MAY 31, 2018 (CSM)

A.R., a Principal Clerk Typist with the Office of Information Technology, appeals the determination of the Equal Employment Opportunity/Affirmative Action Officer, that the appellant did not 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 filed a complaint with the Office of Information Technology’s Equal Employment Opportunity/Affirmative Action Office (EEO/AA) alleging that she had been discriminated against in violation of the State Policy by T.S., Manager 2, Human Resources, J.V., Senior Executive Service, and C.B., Administrator Employee Relations. Specifically, the appellant claimed that Human Resources did not honor her medical teams’ decision to relocate her work station to another area during February 2016, that J.V. did not allow her to hold a Christmas party in J.V.’s area, that C.B. harassed her over a workplace bed bug bite and told her that she would be disciplined if she did not produce a doctor’s note, that she is being harassed and followed by agents of the Human Resource department, and that she was discriminated against due to color and disability because she was not allowed to adjust her core work hours.

The EEO/AA investigated the matter and could not substantiate a violation of the State Policy. Specifically, the investigation found that appellant’s doctor wrote a letter to the appointing authority on July 28, 2016 indicating that “in reading all the accommodations you have made for [A.R.] it appears that you have more than attempted to make her comfortable within her chief complaints.” The

investigation further found that the appellant's workstation was relocated 10 times officially and possibly five times unofficially since 2007, but that she was denied moving her desk in front of T.S.'s office due to the confidentiality of human resource business. The appellant retracted her complaint regarding not being able to hold a Christmas party in J.V.'s area, but the investigation indicated that even if the appellant did not retract the complaint, it did not implicate the State Policy. Regarding the appellant's allegation that she was being harassed by C.B., the investigation found that the appellant left work to visit a doctor for bed bug bites on December 15, 2016 and the Office of Employee Relations (OER) needed proof that she was bitten. However, the appellant provided the requested doctor's note and she was not disciplined. In this regard, the investigation also found that the appellant had received a warning from her supervisor for chronic and excessive absenteeism due to taking time off with no time balance left. Thus, OER advised that if the appellant did not produce a doctor's note, she could have received a warning for her unauthorized absence without pay. Further, the investigation found that the appellant was offered the opportunity to file a Workers Compensation complaint, but she declined. Additionally, the investigation found that the appellant was not harassed by anyone and that there was no evidence that she was being followed by agents of human resources. Finally, human resources verbally advised the appellant that she could not have the early shift because she did not provide a medical reason. In this regard, the investigation found that the appellant's start time was previously switched from 8:30 a.m. to 8:00 a.m. based on a "medical condition on file."

On appeal, the appellant states that she was not given the opportunity to perform her job duties to the best of her abilities like other employees at the Office of Information Technology. In a supplemental submission, the appellant states that the Office of Information Technology has committed an act of discrimination against her. Although provided the opportunity, the appellant does not make any specific arguments as to which portions of the EEO/AA's July 7, 2017 determination that she disagrees with. However, she provides documentation that she was out on disability leave in June 2017 and states that she had to pay back 98 hours of negative balances of sick and leave time while being out in 2017. She questions why she was made to pay back her time when she received numerous donated sick days. The appellant also states that she will be going to a disciplinary hearing in June 2018 for being out periodically during the last 15 days of returning to work in January 2018.

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, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)(3)*.

N.J.A.C. 4A:7-3.2(m) states, in pertinent part, a complainant who disagrees with the determination of the State agency head or designee may submit a written appeal within 20 days of the receipt of the final letter of determination and include all material presented by the complainant at the State agency level, the final letter of determination, the reason for the appeal, and the specific relief requested. In this case, the appellant's appeal to the Commission does not challenge any specific finding in the EEO/AA's July 7, 2017 determination letter. Rather, the appellant's August 4, 2017 appeal and her supplement to her appeal dated April 25, 2018 of the EEO/AA's July 7, 2017 determination to the Commission simply state "I was not given the opportunity to perform my job duties to the best of my ability as well as other State [e]mployees at [t]he Office of Information Technology" and "I feel that the Office of Information Technology has committed an act of [d]iscrimination in the work place against me." While it is evident that the appellant disagrees with the EEO/AA's determination, the burden of proof is on the appellant in discrimination appeals brought before the Commission and she has failed to even initially point out any area of the EEO/AA's July 7, 2017 determination to suggest that the EEO/AA's investigation was not thorough and impartial, or that the record supported a finding that there was a violation of the State Policy. *See N.J.A.C. 4A:7-3.2(m)4*. Other than her apparent disagreement with the findings, the appellant has not provided any evidence to substantiate her allegations. Therefore, on these grounds alone, the appellant's appeal is dismissed. With respect to her concerns about being required to pay back negative leave balances and her 2018 disciplinary matter, these are new matters that were not the subject of the EEO/AA's investigation in this appeal. Therefore, the appellant should pursue these new matters through the appointing authority.

Accordingly, the Commission finds that the EEO/AA's investigation was thorough and impartial, and the record does not support a finding that there was 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
23RD DAY OF MAY, 2018

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: A.R.
Ronald W. Brown
Mamta Patel
Records Center